

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

204

CRM-M-59355-2023 (O&M)

Date of decision: 16.12.2023

LOVELY @ LOVKESH

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM:- HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. Sukhdeep Singh, Advocate for
Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Amrik Singh Narwal, DAG, Haryana.

HARPREET KAUR JEEWAN, J. (ORAL)

1. Prayer in the third petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case bearing FIR No.991 dated 10.12.2019 registered under Sections 376, 506 IPC and Section 6 of the POCSO Act, 2012 at Police City Karnal District Karnal.
2. Reply by way of affidavit of Veer Singh, Deputy Superintendent of Police, City Karnal has been filed in the Court on behalf of respondent-State, which is taken on record.
3. Heard. Learned counsel for the petitioner submitted that the victim has already expired and petitioner is in custody facing the trial and requested for releasing the petitioner on regular bail.
4. Paper book perused.
5. The facts are very unfortunate. The FIR was registered on the basis

- 2-

of a written complaint dated 10.12.2019 given by the father of the victim against the petitioner with serious allegations of sexual abuse of his minor daughter who was 12 years old and a student of 5th class. There are allegations that usually the wife of the complainant brought lunch for the complainant, but on 09.12.2019 the victim was trying to commit suicide by hanging herself with the help of a dupatta, when suddenly her mother saw her and stopped her from doing so and thereafter the complainant was called at home. The parents of the victim asked her about the cause as to why she was committing suicide and the victim started weeping. On being counselled by her parents she told that the present petitioner who is their neighbour, in connivance with co-accused Shubham and Himanshu had forcibly committed raped upon her.

5.1 On 21.09.2019 when the victim was present in her home the petitioner and his accomplice had forcibly entered the house. The minor girl of 12 years was forcibly caught hold by Shubham and the present petitioner. They forcibly removed her clothes and the petitioner tried to press her mouth with his hand and ultimately both committed gang rape with the victim. They also clicked photographs on their mobile phones and threatened to kill her in case she told anyone about the occurrence and to flash her naked photograph to defame her.

5.2 On 25.09.2019, Piyush and Himanshu forcibly entered in her room and again committed gang rape and her photographs were again taken on mobile phones. Both of them put their penis in her mouth and again gave her threats that her entire family would be defamed by showing her photographs.

5.3 Again on 02.10.2019, petitioner and co-accused Shubham committed gang rape.

5.4 On 02.12.2019 co-accused Piyush and Himanshu committed gang

rape with the victim and forcibly put their penis into the mouth of the victim. The victim disclosed these facts to her parents and further told that she was being continuously harassed and was threatened that her naked photographs would be made viral and her family would not be able to show their face to anyone. The victim told her parents that in such circumstances she felt that it would be better to commit suicide under compulsion.

5.5. After the registration of the FIR, the victim made her statement under Section 164 Cr.P.C. on 11.12.2019 before the Judicial Magistrate, 1st Class, Karnal (Annexure P-3) wherein the contentions raised in the FIR regarding gang rape, clicking of photographs of the naked body of the victim and threats given to the victim that her photographs will be made viral and her parents would be killed, were supported. Apart from committing gang rape, the victim stated that accused Himanshu and others put their penis in her mouth and used to shake her head with force.

6. The unfortunate time in the life of the victim did not end here and she ultimately committed suicide.

7. As per status report, Piyush, Shubham and Himanshu were declared innocent during the investigation. However they were ordered to be summoned by the trial Court under Section 319 Cr.P.C. in the present FIR No.991.

7.1 As per custody certificate of the petitioner one another case bearing FIR No.122 dated 31.03.2021 under Section 306/34 PC is found to have been registered against the petitioner-accused in Police Station Butana (Karnal).

7.2 On asking, learned State counsel has informed that she committed suicide on 05.03.2021 regarding which FIR No.122 dated 31.03.2021 under Sections 306/34 IPC was registered against the present petitioner and others; and

cancellation report was prepared by the Investigating Agency of Police Station Butana (Karnal) in the said FIR which is pending with the Superintendent of Police, District Karnal.

7.3 The State counsel has confirmed that since March, 2021 after registration of the said FIR No.122 dated 31.03.2021, the petitioner and his accomplice were not arrested in that case.

7.4. Learned State counsel has further informed that only the present petitioner has been arrested in present case bearing FIR No.991 dated 10.12.2019. Despite the dismissal of the pre-arrest bail under Section 438 Cr.P.C. filed on behalf of co-accused in the present FIR namely Piyush and others, they have neither been arrested nor have they surrendered before the Court. The anticipatory bail filed by co-accused stood dismissed vide order dated 10.08.2023 passed by Co-ordinate Bench of this Court in CRM-M-30476-2023.

7.5. The co-accused namely Piyush and others had filed a revision against the summoning order under Section 319 Cr.P.C. whereby they were summoned to face the trial in the present FIR No.991. However, the same had been dismissed by the Co-ordinate Bench vide order dated 10.08.2023 passed in CRR-1389-2023. Even after dismissal of the said revision petition, the co-accused have not been arrested.

8. The statement of the victim under Section 164 Cr.P.C. (Annexure P-3) reveals that co-accused Piyush is real brother of the present petitioner, as such despite the arrest of the petitioners, no efforts have been made to arrest the co-accused. In the present FIR No.991 despite the dismissal of the application for anticipatory bail moved on their behalf as well as dismissal of the criminal revision petition against the summoning order under Section 319 Cr.P.C. The

inaction on the part of the police authorities is further highlighted from the fact that despite the father of the minor victim informed the police by way of making a written complaint that his daughter had tried to commit suicide on account of her sexual abuse, about the threats given to her and that she was gang raped and even the accused tried to do unnatural acts and thereafter the victim ultimately ended her life, no action has been taken against the co-accused of the petitioner. The inaction on the part of the police authorities is further highlighted that instead of conducting a fair investigation, Piyush-non-applicant, who is real brother of the petitioner is living in the neighbourhood in the victim's family, even the cancellation report has been prepared in FIR No.122 registered under Section 306 IPC and no arrest has been made even in that case. There is clear indication of connivance of police authorities with the petitioner and his family members including his brother Piyush.

9. It is also noticed that there is inaction on the part of Child Welfare Committee and all the authorities under The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as Act of 2015), whereby a minor child was sexually violated and the authorities remained silent and no action was taken by them.

10. The Government has incurred lot of expenditure for creating infrastructure, engaging the employment and by creating the mechanism for "Protection of Children" in order to implement the Act of 2015. As per the FIR, the minor victim was under constant threat from the co-accused of the petitioner, one of whom was residing in the neighbourhood of the victim. Neither the co-accused was arrested nor there is any indication that any efforts were made to provide protection to the minor who was victim of sexual abuse. Counselling of

the minor child could have been done after registration of the present FIR No.991. She could have been provided with interim relief by the Special Juvenile Police Unit (SJPU) or the local police authorities in view of the provisions of Rule 4 of The Protection of Children from Sexual Offences Rules, 2020 (hereinafter referred as Rules of 2020) and any of the interim relief could have been granted to her under Rule 9 of the said Rules.

11. Unfortunately, the minor victim who was sexually abused ended her life after a period of 1 year and about 9 months after her sexual abuse when the accused in her neighbourhood remained unarrested and she was not provided with any assistance despite the enactment of The Juvenile Justice (Care and Protection of Children) Act, 2015, The Protection of Children from Sexual Offences Rules, 2020 as well as The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as Act of 2012). The FIR was registered on 21.09.2019 and she committed suicide on 05.03.2021. During all this period the minor girl could have been struggling with herself and even after recording of her statement under Section 164 Cr.P.C. on 11.12.2019, she could have been struggling alone and ultimately she had committed suicide.

12. During all this period, *prima facie* no action has been taken on the part of the Police Authorities, State authorities including the Child Welfare Authorities under the Act of 2015, Rules of 2020 and Act of 2012.

13. The victim was a “Child in need of Care and Protection” as defined under sub-Section 14 of Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015. “Child Welfare Committees” have been constituted in the State in pursuance to Chapter IV of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. Such Committees have serious responsibilities

towards children who are in need of care and protection and a detailed procedure is required to be followed in relation to such a child is provided under Chapter V of the said Rules.

14. Each District is having a “District Child Protection Unit” and “Special Juvenile Police Unit” (SJPU). Police authorities have responsibilities to forward information about registration of such an FIR to authorities under the Act of 2015 and Act of 2012 and the Rules from thereunder. Police authorities are also having responsibility under the Act to coordinate with the authorities constituted under the Act for taking care of the children who are in need of care and protection.

15. The monitoring and implementation of Act of 2012 is also been done by the National Commission for the Protection of Child Rights (NCPCR) at the National level and State Commission for the Protection of Child Rights (SCPCR) at the State level.

16. A child who has suffered sexual abuse is entitled to adequate security and protection by the police, counseling and consultation for psychological well being, immediate aid and assistance on the recommendations of CWC, to be kept away from accused at all times during trial and otherwise and have list of important contact numbers including that of the District Magistrate and the Superintendent of Police apart from various rights and such rights are listed in “Form A”, which is part of the Rules of 2020.

FORM A

“Entitlement of Children who have suffered sexual abuse to receive information and services

- 1. To receive a copy of the FIR.*
- 2. To receive adequate security and protection by Police.*
- 3. To receive immediate and free medical examination by civil hospital/PHC, etc.*
- 4. To receive counseling and consultation for mental and psychological well being.*

5. For recording of statement of child by woman police officer at child's home or any other place convenient to child.
6. To be moved to a Child Care Institution where offence was at home or in a shared household, to the custody of a person whom child reposes faith.
7. For immediate aid and assistance on the recommendation of CWC.
8. For being kept away from accused at all times, during trial and otherwise
9. To have an interpreter or translator, where needed.
10. To have special educator for the child or other specialised person where child is disabled.
11. For Free Legal Aid.
12. For support person to be appointed by Child Welfare Committee.
13. To continue with education.
14. To privacy and confidentiality.
15. For list of Important Contact No.'s including that of the District Magistrate and the Superintendent of Police."

17. The procedure regarding care and protection of a child which has to be followed by the police authorities including Special Juvenile Police Unit (SJPU) as contained Act of 2012 reads as under:

"4. Procedure regarding care and protection of child.-(1)
Where any Special Juvenile Police Unit (hereafter referred to as "SJPU") or the local police receives any information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving the report of such information shall forthwith disclose to the person making the report, the following details:-

- (i) his or her name and designation;*
- (ii) the address and telephone number;*
- (iii) the name, designation and contact details of the officer who supervises the officer receiving the information.*

(2) If any such information regarding the commission of an offence under the provisions of the Act is received by the child helpline-1098, the child helpline shall immediately report such information to SJPU or Local Police.

(3) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable-

(a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of that Code,

(b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 6;

(c) take the child to the hospital for the medical examination in accordance with section 27 of the Act,

(d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory immediately;

(e) inform the child and child's parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;

(f) inform the child and child's parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

(4) Where the SJPU or the local police receives information under sub-section

(1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.

(5) Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2015 (2 of 2016), to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of child's family or shared household and placed in a children's home or a shelter home.

(6) In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations, namely:-

(i) the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counseling;

- (ii) the need for the child to remain in the care of parent's, family and extended family and to maintain a connection with them;*
- (iii) the child's age and level of maturity, gender, and social and economic background;*
- (iv) disability of the child, if any,*
- (v) any chronic illness from which a child may suffer;*
- (vi) any history of family violence involving the child or a family member of the child; and,*
- (vii) any other relevant factors that may have a bearing on the best interests of the child:*

Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

(7) The child and child's parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered.

(8) The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child's parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child.

(9) The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he or she has access and shall keep the child and child's parent or guardian or other person in whom the child has trust and confidence, informed regarding the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. The Support person shall also inform the child of the role the Support person may play in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the Support person would like to provide child's testimony, are conveyed to the relevant authorities,

(10) Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.

(11) The services of the support person may be terminated by the CWC upon request by the child and child's parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

(12) *The CWC shall also seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental wellbeing, and progress towards healing from trauma, engage with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counseling, and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required.*

(13) *It shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.*

(14) *SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per Form-A. It shall also complete the Preliminary assessment Report in Form B within 24 hours of the registration of the First Information Report and submit it to the CWC.*

(15) *The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:*

- (i) the availability of public and private emergency and crisis services,*
- (ii) the procedural steps involved in a criminal prosecution;*
- (iii) the availability of victim's compensation benefits,*
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;*
- (v) the arrest of a suspected offender,*
- (vi) the filing of charges against a suspected offender;*
- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;*
- (viii) the bail, release or detention status of an offender or suspected offender,*
- (ix) the rendering of a verdict after trial; and*
- (x) the sentence imposed on an offender”*

18. No one bothered for the victim who was a “Child in need of Care and Protection”. As such, this Court feels for issuance of directions to the District

Administration and to the Superintendent of Police, District Karnal to submit reasons for the neglect in performance of duties under the Act of 2012, Act of 2015 and Rules of 2020 resulting in the loss of life of a child who was in “need of Care and Protection” and a “Child Victim of Sexual Abuse”.

19. Let the response be filed by way of affidavit by Deputy Commissioner, Karnal and by Superintendent of Police, District Karnal for the said lapse. The said affidavits be filed through the Principal Secretary Department of Woman Child and Welfare of the State and through the DGP, Haryana respectively.

20. Learned counsel for the petitioner wants to withdraw the bail petition, as such the present bail petition stands dismissed. Proceedings be listed to 18.01.2024 for awaiting report.

21. Copy of this order be also placed before the “Juvenile Justice Monitoring Committee” of this Court.

(HARPREET KAUR JEEWAN)
JUDGE

16.12.2023
P.Bhatt

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No