

**115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-639-2024

Date of decision: 02.04.2024

Vivek Yadav

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Varun Sharma, Advocate
for the petitioner

Mr. Subhash Godara, Addl. AG, Punjab

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against impugned order dated 19.03.2024 passed by learned Additional Sessions Judge-cum-Fast Track Special Court (POCSO), Jalandhar whereby the application dated 19.03.2024 filed by the petitioner for summoning of two witnesses at the stage of defence evidence, in FIR No. 94 dated 22.04.2022 registered under Sections 354-B of the IPC, 7,8,9(1),9(M),10 of Protection of Children from Sexual Offences Act, 2012 at Police Station Rama Mandi, District Jalandhar (hereinafter 'the POCSO Act'), has been dismissed.

2. The brief facts of the case are that the complainant is a 13 year old minor girl and was training under the petitioner-accused, her boxing coach. The petitioner, allegedly, sexually assaulted the complainant by touching her inappropriately. Furthermore, the petitioner-accused commanded the prosecutrix to sleep in his room, and upon her refusal to do so, gave beatings.

On the basis of this, the instant FIR was registered against the petitioner-accused.

3. On being charged by the learned trial Court, the petitioner-accused pleaded not guilty and claimed trial. The trial proceedings were at the stage of recording defence evidence, when on 19.03.2024, the petitioner-accused filed an application to summon two witnesses in furtherance of recording petitioner-accused's evidence. The learned trial Court vide impugned order dated 19.03.2024 dismissed the said application on the ground that the petitioner-accused misused the process of law in order to delay the proceedings.

4. Learned counsel for the petitioner submits that the impugned order is unsustainable as the learned trial Court has failed to appreciate the fact that the concerned clerk/record keeper from the office of ACP, Central Police Commissionerate, Jalandhar, along with record pertaining to complaint bearing no. 208/Ptoo dated 28.12.2021 must be examined in order to corroborate the plea of the petitioner-accused. He submits that the petitioner is being falsely implicated in the FIR (*supra*) as other female athletes namely, Priya, Praveen and Rahat had given joint statements along with other trainees which were duly recorded by the police in the abovementioned complaint.

5. Learned counsel further contends that the learned trial Court also failed to acknowledge that the Investigation Officer/official of Police Station Rama Mandi along with the record pertaining to General Diary no. 031 dated 04/12/2021 are essential for the just adjudication of the case since the record bears the statement recorded by an athlete namely Priya wherein it has been stated that she was threatened to be falsely implicated in a criminal case and

pressurized by one Rahul Dogra, who is the father of the complainant, to depose in favour of the prosecution account.

6. Having heard the learned counsel for the petitioner and perused the record with his able assistance, it would be profitable to reproduce Section 233 of Cr.P.C., which reads as under:

233. Entering upon defence.—

“(1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”

7. The accused has an inalienable right to be heard and lead evidence, which includes examining and cross examining of witnesses or produce any material evidence, in his defence. Section 233 of Cr.P.C. makes it obligatory upon the Sessions Judge to enable the same by issuance of process. This obligation is evident from the fact that if such an application is made, the Sessions Judge shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. It further provides that such grounds shall be recorded by him in writing. Thus, the Sessions Judge may also refuse an application to this effect only if she/he is of the view that the exercise is motivated by malicious agenda and only serves the purpose of unnecessarily delaying the trial, thereby defeating the ends of justice.

8. The principles of natural justice are an integral facet of Article 21 of the Constitution of India, which includes the right to a free and fair trial by ensuring that all the parties are heard. A denial of the best available evidence or effective and substantial hearing to the accused in proving his defence would amount to a denial of his right to free and fair trial. It is of the utmost importance that the procedure established by law is scrupulously complied with to lend credibility to the judicial proceedings.

9. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 19.03.2024 is hereby set aside, however, this will be subject to deposit of cost of Rs.10,000/- with the District Legal Services Authority, Jalandhar, for wasting precious time of the Court. No prejudice would be caused to the prosecution if an opportunity is granted to the defence to lead evidence as the prosecution will always have the opportunity to cross-examine the said witnesses. Therefore, the learned trial Court is directed to secure presence of the defence witnesses as well as production of the relevant record, and provide sufficient opportunity to the defence to conclude its evidence.

(HARPREET SINGH BRAR)
JUDGE

02.04.2024
Neha

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