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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35900-2024 (O&M)

Date of Decision: 24.10.2024

JOBANJIT SINGH ALIAS VIJAY ALIAS JOBAN

.. Petitioner

Vs.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Harmanpreet Singh, Advocate for the petitioner.

Mr. Yuvraj Singh Tiwana, Asstt. A.G., Punjab.

...

SUMEET GOEL, J. (Oral)

1. On 16.09.2024, the following order was passed by this Court:

“1. The present petition has been filed under Section 439 of Cr.P.C., 1973 by petitioner - Jobanjit Singh @ Vijay @ Joban for grant of regular bail to him in FIR No.55 dated 07.11.2023 under Sections 363, 366- A, 376 and 120-B of IPC and under Section 6 of POCSO Act, registered at Police Station Mattewal, District Amritsar Rural.

2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“Statement of statement of Baljit Kaur wife of Satnam Singh resident of village Sialka PS Mattewal aged about 40 years, stated that I am resident of above mentioned address and doing household work, I have two children, elder is son Jaskaran Singh who is married. My daughter Khushnoor Kaur who is studying in + 1 class at Senior Secondary School Tahli Sahib. That on 02.11.2023 she had gone to bus stand Tahli Sahib in the school at 9 AM but after the school was over, my daughter Khushnoor Kaur did not return the home and my daughter did not find me The date of birth of my daughter is 24.02.2008, whereas her age is 15 years 8 month, who is minor now. I have full confidence that my daughter Kushnoor Kaur has been enticed away by Ajay pal Singh son of Harjinder Singh alias bittu resident of Sialka of my village to some place on the pretext of marriage. I have suspicion that in the enticing of my daughter Kushnoor kaur, his brother Joban Singh son of Harjinder Singh alias bittu resident of Sialka has full support. Till today I search my daughter Kushnoor kaur at my own but I could not find her, today me and my husband Satnam Singh son of Kashmir Singh resident of Sialka were coming to police station for given the information, you met us, I have given you the photo copy of Aadhar card and

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school certificate of my daughter to you. Action be taken against Ajaypal Singh and his brother Joban, my daughter may be returned to me. This statement has been given by me in the presence of my husband Satnam Singh, statement heard which is correct sd Baljit Kaur”

3. *Learned counsel for the petitioner has argued that the prime role ascribed to the petitioner (herein) is that he has helped his brother namely Ajay Pal Singh in enticing away the victim as also committing sexual assault upon her. Learned counsel has further argued that the petitioner is in custody since 14.12.2023. It has been further argued that the co-accused namely Ajay Pal Singh and the victim were on friendly terms & the petitioner (herein) has been falsely implicated into the FIR in question. According to learned counsel, the testimonies of the prime prosecution witnesses i.e. the victim as also her mother, stand already recorded and hence there is no likelihood of the petitioner interfering with the prosecution evidence. In this view of the matter, learned counsel has prayed for grant of regular bail.*

4. *Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 12.09.2024 in Court, which is taken on record.*

5. *I have heard counsel for the parties and have gone through the available records of the case.*

6. *The petitioner was arrested on 14.12.2023 whereinafter investigation was carried out; challan was presented on 25.01.2024 and charges were framed on 21.02.2024. Total 19 prosecution witnesses have been cited, out of which 04 witnesses already stands examined and hence culmination of the trial will take its own time. It is not disputed that the testimonies of the prime prosecution witnesses namely the victim as also the mother of the victim already stand recorded as prosecution witness. The rival contention of learned counsel for the parties; as to whether there was friendly relation between co-accused (i.e. Ajay Pal Singh) and the victim as also whether the petitioner has been falsely implicated into the FIR in question; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence. As per custody certificate dated 12.09.2024 filed by learned State counsel, the petitioner has already suffered incarceration for a period of 08 months and 28 days & is not shown to be involved in any other case.*

7. *Keeping in view the totality of the facts and circumstances of the case, the petitioner is ordered to be released on interim regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate till the next date of hearing. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-*

(i) The petitioner shall not mis-use the liberty granted.

(ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.

(iii) The petitioner shall not absent himself on any date before the trial.

(iv) The petitioner shall not commit any offence while on bail.

(v) The petitioner shall deposit his passport, if any, with the trial Court.

(vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and



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shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate. (vii) The petitioner shall not in any manner try to delay the trial.

8. *There is another aspect of the matter which craves attention of this Court.*

8.1 *On 20.08.2024, the following order was passed by this Court, which reads as under:*

"1. The present petition has been filed under Section 439 of Cr.P.C., 1973 by petitioner - Jobanjit Singh @ Vijay @ Joban for grant of regular bail to him in FIR No.55 dated 07.11.2023 under Sections 363, 366-A, 376 and 120-B of IPC and under Section 6 of POCSO Act, registered at Police Station Mattewal, District Amritsar Rural. In terms of the judgment rendered by this Court titled as 'Abhishek Jain Vs. State of U.T. Chandigarh and another (CRM-M-31808-2024:2024:PHHC:085784), the instant petition is not maintainable under Section 439 of Cr.P.C., 1973. However, keeping in view the entirety of facts and circumstances of the case as also the factum that the instant petition pertains to regular bail, the instant petition is directed to be considered as a petition under Section 483 of BNSS, 2023.

2. During the course of hearing of the instant petition on 02.08.2024, learned counsel for the petitioner had brought to the notice of this Court the factum of two prime prosecution witnesses namely the victim as also mother of the victim having been examined in-chief and their cross-examination having been deferred to 06.09.2024. The order dated 29.07.2024, passed in this regard by the learned trial Court, reads thus:-

*"Present: Ms. Anju Sharma, Additional P.P. for the State
Both the accused in custody.*

In evidence, prosecution examined PW-1 K.Kaur prosecutrix and PW-2 B.Kaur mother of prosecutrix and their cross-examination is deferred on the request of accused that they intends to engage a new counsel on the next date of hearing. PW Satnam Singh is also present.

As such, all the above said witnesses are bound down for 06.09.2024. Accused are directed to engage new counsel for the said date.

*Date of order: 29.07.2024 (Tripat Jot Kaur)
Sumit Gupta, Stenographer-II Addl. Sessions Judge,
Amritsar*

3. *In view of the above, vide order dated 02.08.2024, this Court had directed the trial Court to send a report to this Court regarding the trial proceedings.*

4. *A report dated 09.08.2024 has since been received from the learned trial Court, relevant whereof reads as under:*

"It is respectfully submitted that case was received by way of entrustment in the court of Shri Randhir Verma, the Learned Addl. Sessions Judge, Amritsar on 25.01.2024. The charge under section 363, 366, 366-A, 376 read with section 120-B of Indian Penal Code and in the alternative section 6 of POCSO Act was framed against the accused on 21.02.2024. As per list of witnesses, there are 18 witnesses of the prosecution, out of which two witnesses i.e. PW1 K. Kaur, victim and PW2 B.Kaur, mother of victim have been examined-in-chief by the prosecution and their cross-examination was deferred on the request of accused as they intend to engage a new counsel and case was adjourned to 06.09.2024 for cross-examination of the above said PWs and remaining evidence of the prosecution witnesses."

5. *Today, a request has been made by the learned counsel for the petitioner, that the hearing of the instant bail petition be deferred to a date beyond 06.09.2024 as the cross-examination of two prime private prosecution witnesses namely the victim and mother of the victim is likely to be recorded before the trial Court on 06.09.2024.*



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In the interest of justice, hearing of the instant petition is deferred to 13.09.2024.

6. *At this juncture, it would be essential to look into a disturbing aspect of the matter. A perusal of the order dated 29.07.2024 passed by the trial Court as also the report dated 09.08.2024 sent by the trial Court to this Court, indubitably, reflects that the examination-in-chief of two private prime prosecution witnesses namely the victim and mother of the victim was recorded on 29.07.2024 & cross-examination of these two witnesses were deferred to 06.09.2024 at the request of the accused.*

6.1 *It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as Vinod Kumar vs. State of Punjab (2015) 3 SCC 220 : 2014 INSC 670, relevant whereof reads as under:*

"51. It is necessary, though painful, to note that PW 7 was examined-in-chief on 30-9-1999 and was cross-examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months."

6.2 *The ratio decidendi of this judgment (Vinod Kumar's case) has been reiterated by the Hon'ble Supreme Court in a case titled as Selvamani vs. The State Rep. by the Inspector of Police : 2024 INSC 393.*

7. *It appears that the learned trial Judge is undertaking trial proceedings in lackadaisical nay negligent manner. The examination-in-chief of 02 prime prosecution witnesses namely the victim and mother of the victim appears to have been recorded on 29.07.2024 without the presence of any Counsel on behalf of the accused and, further, the cross-examination has been deferred at the request of the accused that they intended to engage "a new counsel". Still further the cross-examination of 02 private prime prosecution witnesses, perhaps, the 02 most material prosecution witnesses (the victim and mother of the victim) has been deferred for a period of about 05 weeks. The way trial proceedings are being carried out appears to be in derogation of the provisions of law including the dicta of the judgments of the Hon'ble Supreme Court in Vinod Kumar (supra) and Selvamani (supra). However, before any conclusion is drawn in this respect, it is deemed appropriate that explanation be sought from the concerned trial Judge.*

8. *Accordingly, the Registrar (Vigilance) of this Court is directed to seek explanation from the concerned trial Judge and submit the same before this Court on or before the next date of hearing. Registrar (Vigilance) is also directed to put up a note regarding the instruction(s) issued by this Court to Trial Courts in respect of issue of deferring cross-examination of prosecution witnesses."*

8.2 *The explanation dated 04.09.2024 has been received from the trial Court which reads as under:*

"Humbly submitted that any kind of inconvenience caused to Hon'ble High Court is deeply regretted. It is respectfully submitted that undersigned joined my duty as Addl. District & Sessions Judge, Fast Track Special Court, Amritsar, on 24.04.2024 (Forenoon), consequent upon my transfer orders issued by the Hon'ble High Court of Punjab and Haryana bearing Endst. No.246 Gaz.I/VI.F.8 dated 19.04.2024. The case titled as State vs Jobanjit Singh @ Vijay @ Johan was actually transferred to the court of undersigned on 31.05.2024 and fixed for hearing on 29.07.2024 for prosecution evidence. In pursuance to the summons issued by the

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court, complainant/prosecutrix and her father appeared in the court on 29.07.2024. When this court proceeded to record their statements, adjournment was requested by the learned defence counsel to bound the witnesses for some other date which was declined.

It is humbly submitted that the only thing that weighed in the mind of the undersigned that the accused might try to threaten/influence or win over the prosecutrix and her parents who were the star witnesses of the case. This fact propelled the undersigned to record the examination in chief of the prosecutrix and her mother in camera, in the due presence of accused and learned defence counsel.

It is respectfully submitted that when the learned defence counsel was asked to cross-examine the witnesses, he left the court and did not come thereafter, despite calling the case many times. The accused, who was produced in judicial custody, was also asked to call his counsel to cross-examine the witness, but learned defence counsel did not appear in the court. Ultimately, the accused requested adjournment to engage new counsel as his earlier counsel was not responding to his calls. The accused was given option to engage legal aid lawyer and to avail services of the legal aid defence lawyer, but he requested that he intends to engage private counsel to defend his case. In these circumstances, this court considered the request made by accused himself, to protect his valuable right to cross-examine material witnesses of the case.

It is further submitted that the afore stated facts could not be recorded in detail in the Zimni order dated 29.07.2024, due to rush of work in the court. On 29.07.2024, 03 Civil and 47 criminal cases including POCSO cases, NDPS cases, IPC cases and cases of other categories, were pending in the court of undersigned. In total 10 prosecution witnesses were examined in the court on the said date. In one criminal case titled as "State vs Manpreet Singh", under POCSO Act, arguments were heard and case was decided on the same day.

The instant case titled as 'State Vs Jobanjit Singh @ Vijay @ Johan & Another' was instituted on 25.01.2024. The five week adjournment was given only with a view to give reasonable time to the accused, who was in custody, to engage a private counsel. The cause list for the entire month of August, 2024 stood already exhausted, as sufficient number of civil and criminal matters where accused are in judicial custody, were already fixed, due to which matter was adjourned in the 1st week of September, 2024, just to ensure the complete examination of material prosecution witnesses on the said date. The undersigned had no such intention to grant long adjournment in the matter, as the accused is in judicial custody, in this case.

It is humbly submitted that the undersigned shall make sincere efforts to complete the examination of prosecutrix/complainant and other star witnesses on date fixed and further grant short adjournments in such cases. The explanation is hereby submitted for your kind perusal."

8.3 A note has also been put by the Registrar (Vigilance), as directed for earlier.

8.4 This Court has ratiocinated upon the explanation rendered by the trial Court as also the note put up by the Registrar (Vigilance) in light of judgments of the Hon'ble Supreme Court in cases of Vinod Kumar (supra) and Selvamani (supra). The explanation sent by the trial Court does not call for acceptance as it is sans the dicta of the judgments of the Hon'ble Supreme Court as also the instructions issued by this Court from time to time. From the explanation, no pragmatic cause is shown for adjourning the case for cross-examination of the prime prosecution witness for a long period of 05 weeks which shows absolutely inappropriate undertaking of proceedings on part of the trial Court in a serious matter as the case in hand is. Furthermore, the explanation fails to address the core issue raised by this Court and the trial Court has not fully considered the implications of its zimni order dated 29.07.2024. It is evident that no



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substantial cause has been demonstrated in the explanation to justify the unwarranted adjournment of the matter for cross-examination of the prime prosecution witness for a protracted period of 05 weeks. This delay, in a matter of such gravity, amounts to a dereliction of judicial duty and reflects poorly on the expeditious administration of justice. What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the Court must be examined with the seriousness it deserves. A Court speaks through its action and more so through its judgments and orders, which is the platform for communication between all the stake holders. This should above all create a sense of confidence in the system. Time and again the Courts have been sensitized to conduct the proceedings in such a manner so that it creates belief in the litigants that ‘fair trial’ is ensured. Thus, it is clear that a Judge’s responsibility is very heavy, particularly, in a case where a man’s life and liberty hang upon his decision nothing can be left to chance or doubt of conjecture. Ergo, the explanation submitted by the learned trial Court that the entire facts could not be recorded in the zimni order dated 29.07.2024, also deserves to be rejected. Under the circumstances, the concerned trial Judge is advised to remain careful in future while discharging her judicial functions.

8.5. The trial Court is directed to send a report regarding the status of trial proceedings well before the next date of hearing.

9. Adjourned to 24.10.2024.

10. To be taken up immediately after the urgent cause list.”

2. Keeping in view the entirety of facts and circumstances of the case, especially that the petitioner has not misused the concession of interim regular bail earlier extended to him, the order dated 16.09.2024 is hereby confirmed.

3. Pending applications, if any, shall also stand disposed off.

24.10.2024

Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned Yes No

Whether reportable Yes No