



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

CRM-M-37910-2024
Date of decision: 21.10.2024

Vxxx and anotherPetitioners

Versus

State of U.T. Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amit Bhanot, Advocate
for the petitioners.

Mr. Sumit Jain, Addl.A.P.P., U.T. Chandigarh.

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Section 482 Code of Criminal Procedure, 1973 (hereinafter Cr.P.C.) to direct the respondent to compensate the petitioners under the Union Territory of Chandigarh Victim Assistance Scheme, 2018 (hereinafter 'the Scheme of 2018') as the latter are the victims in the case stemming from FIR bearing No.23 dated 19.01.2016 registered under Sections 376(2), 506, 498-A of IPC at Police Station Industrial Area, Chandigarh.

2. The facts, succinctly put, are that on 19.01.2016, the FIR (supra) was registered against Ram Narayan Pandey, Ashok Kumar and Pushpa Devi. The investigation was conducted and the trial commenced before the learned Additional Sessions Judge cum Judge, Special Court, Chandigarh. Vide judgment dated 26.09.2017, all the aforementioned accused were convicted and vide order of sentence dated 29.09.2017, accused-Ram Narayan was sentenced to undergo rigorous imprisonment with fine under Sections 376(f) & (n), 506 of



IPC, whereas, accused-Ashok Kumar and Pushpa Devi were sentenced to undergo rigorous imprisonment of ten years with fine under Sections 120-B, 506 of IPC. Further, a fine of Rs. 1,05,000/- was imposed upon Ram Narayan, out of which, Rs. 1,00,000/- was to be paid to petitioner No.1-victim. Moreover, as a result of the sexual assault, petitioner No.1 got pregnant and gave birth to petitioner No.2. Hence, the instant petition.

3. Learned counsel for the petitioner submits that it is duly concluded vide judgment dated 26.09.2017 passed by the learned trial Court that petitioner No.1 was subjected to rape and sexual assault at the hands of the convict Ram Narayan. Further, the medical evidence as well as the DNA test of Ram Narayan proves beyond reasonable doubt that he is the father of petitioner No.2. Therefore, the petitioners ought to be granted compensation, to the tune of Rs. 5,00,000/- to Rs. 10,00,000/-, for rape plus Rs. 3,00,000/- to Rs. 4,00,000/- for pregnancy on account of rape as mentioned in the schedule appended with the Scheme of 2018. However, petitioner No.1 was only granted a meagre amount of Rs. 1,00,000/- by the learned trial Court out of the total fine imposed upon the convict Ram Narayan. Learned counsel further argues that petitioner No.1 has no means to sustain herself and bear the expenses of petitioner No.2 and hence, the compensation awarded under the Scheme of 2018 would go a long way to enable the petitioners to lead a dignified life for themselves.

4. *Per contra*, learned State counsel, submits that Ram Narayan was convicted in the year 2017 whereas the Scheme of 2018 was brought into force in 2019. Hence, the case of the petitioners would be covered by the Union Territory of Chandigarh Victim Assistance Scheme, 2012 (hereinafter 'Scheme

of 2012’) as the conviction occurred much prior to the enforcement of the Scheme of 2018.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the convict Ram Narayan was convicted vide judgment dated 26.09.2017 and sentenced vide order dated 29.09.2017 which is as follows:

Offence under	Sentence
Section 376(f) and (n) IPC	Rigorous imprisonment for 10 years and a fine of Rs. 1,05,000/, in default of which further rigorous imprisonment for 1 year.
Section 506 IPC	Rigorous imprisonment for 1 year and a fine of Rs. 2,000/-, in default of which further rigorous imprisonment for 2 months.

6. A perusal of the order of sentence dated 29.09.2017 indicates that compensation to petitioner No.1 was granted under Section 357 Cr.P.C only as Rs. 1,00,000/- out of the total fine of Rs. 1,05,000/-, imposed upon the convict- Ram Narayan under Section 376(f) and(n) IPC, was ordered to be paid to her as compensation. Evidently, no direction was issued to the District Legal Services Authority (hereinafter ‘DLSA’), Chandigarh to award compensation to the petitioners in accordance with the Victim Assistance Scheme. This Court is of the considered opinion that the learned trial Court has erred in not realising the gravity of the situation and referring the matter to DLSA for grant of adequate compensation. As such, the petitioners cannot be allowed to suffer for the fault of the learned trial Court.

7. Firstly, the term ‘victim’ is defined as following under Section 2(a) of the Scheme of 2018:

Section 2. Definitions- *In this scheme, unless the context otherwise requires-*

(a) **‘victim’**: means as defined in clause (wa) of Section 2 of the Code of Criminal Procedure, 1973 including the victim(s) of mob violence/ lynching, offences committed under POCSO Act and the acid attack victims.

A perusal of Section 2(wa) of the Cr.P.C. would indicate that the term victim would include not only the person who has suffered a loss or injury by the acts/omissions of the offender, but also her legal guardians and legal heirs. Therefore, being the legal heir of petitioner No.1 and given the fact that she was born out of the rape committed on her, petitioner No.2 will also be a victim. The minimum monetary relief prescribed for the relevant offence, in the present case, as mentioned in the respective Schedules appended with the Scheme of 2012 as well as the Scheme of 2018, are reproduced as under:

A. Union Territory of Chandigarh Victim Assistance Scheme, 2012

Sr. No.	Particulars of Loss or Injury	Minimum Limit of Assistance	Maximum Limit of Assistance
2.	Rape	Rs. 2 Lakh	Rs. 3 Lakh

B. Union Territory of Chandigarh Victim Assistance Scheme, 2018

Sr. No.	Particulars of Loss or Injury	Minimum Limit of Assistance	Maximum Limit of Assistance
2.	Rape	Rs. 5 Lakh	Rs. 10 Lakh
xx	xx	xx	xx
11 (a)	In case of pregnancy on account of rape	Rs. 3 Lakh	Rs. 4 Lakh

8. The FIR (supra) was registered on 19.01.2016 and the convict Ram Narayan was convicted on 26.09.2017. The date of the judgment of conviction is material to the present case as the Scheme of 2018, which was



brought into force on 31st July, 2019, was not in existence at the time of the conviction. The Scheme of 2018 repealed the Union Territory of Chandigarh Victim Assistance Scheme, 2012, and hence, the latter was in force at the time when the judgment of conviction was passed.

9. The following question falls for consideration of this Court-

Would a victim of rape be entitled to compensation under the Victim Compensation Scheme if the judgment of conviction was rendered prior to the enforcement of the said Scheme?

10. The Victim Assistance Scheme must be viewed as a social welfare measure. It is settled law that the application of such progressive legislations should be interpreted to be retrospective in nature. Recently, the Hon'ble Supreme Court ***in In Re- Inhuman Conditions in 1382 Prisons in Writ Petition (Civil) No. 406/2013***, vide order dated 23.08.2024 ordered the provisions qua suspension of sentence provided in Bharatiya Nagarik Suraksha Sanhita, 2023 i.e. Section 479 to be retrospectively applied to all cases falling within the purview of its predecessor i.e. Section 436-A, Code of Criminal Procedure, 1973. It was opined that since the personal liberty of the undertrial prisoners is at stake, the more benevolent provision would be applicable. Similarly, in a case dealing with the premature release of persons sentenced to suffer imprisonment for life, a three Judge Bench of the Hon'ble Supreme Court in ***Rajkumar vs. The State of Uttar Pradesh 2023(11) Scale 61***, speaking through the Chief Justice of India Dr. D.Y. Chandrachud, made the following observations:

“6. ...This Court has hence directed that while, as a general principle, the policy which was in existence on the date of the conviction would govern the consideration of each case for premature release, in the event that a more liberalized policy is instituted subsequently, the case should be considered on the basis of the more liberalised provision.”



xxx

xxx

xxx

13. ... It must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination."

In the present case, the Scheme of 2018 was drafted just one year prior to the date of the pronouncement of the judgment of conviction. As a welfare State, a retrospective effect must be given to such legislations as they aim to grant compensation to victims, especially those who have suffered heinous crimes and sustained profound and lasting physical, psychological, and social impact. Therefore, given the gravity of the offence committed against the petitioners, ends of justice would be met if the present case is governed by the Scheme of 2018 as it is more beneficial than its predecessor. Therefore, the question framed above is answered in the positive.

11. Pertinently, a perusal of the Scheme of 2018 nowhere indicates the nature of its applicability to be prospective or retrospective. Moreover, the eligibility of the petitioners to seek compensation under either of the two Schemes is also not in dispute, as the petitioners are victims of the offence of rape. However, the Scheme of 2012 provides a compensation of Rs. 2 Lakh to Rs. 3 Lakh, the Scheme of 2018 has increased the limit significantly to Rs. 5 Lakh to Rs. 10 Lakh. The Scheme of 2012 did not have a specific provision of providing compensation to a victim, impregnated on account of rape, while the Scheme of 2018 provides an additional compensation of Rs. 3 Lakh to Rs. 4 Lakh in such cases. Thus, the Scheme of 2018 is clearly more beneficial than the Scheme of 2012. While no monetary compensation can undo the sufferings of petitioner No.1, efforts must be made to assist her to lead a life of dignity, as

envisaged under Article 21 of the Constitution of India. The compensation henceforth granted would ensure that petitioner can provide her daughter with a stable and nurturing environment, free from the external stressors that might otherwise impede her upbringing. This support would help foster her well-being, enabling her to pursue a future filled with opportunity and care. It is trite law that the welfare of the child is paramount and the Courts, while exercising its *parens patirae* role, must act in a manner to best realize it.

12. In view of the discussion above the District Legal Service Authority, Chandigarh is directed to consider the case of the petitioners under the Scheme of 2018 within 4 weeks from the receipt of a certified copy of this order. The present petition is disposed of, accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

21.10.2024
Neha

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