



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

103

CRM-M-40417-2023.

Date of Decision: 02.09.2024.

Shankar

....Petitioner.

VERSUS

State of Haryana

....Respondents.

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Abhimanu Jangra, Advocate for the petitioner.

Mr. Anant Kataria, Deputy Advocate General, Haryana.

ANUPINDER SINGH GREWAL, J. (Oral)

The petitioner is seeking a direction to the respondents for further/re-investigation in FIR No.120 dated 18.02.2018, Police Station Mujessar, Faridabad (Annexure P-3).

2. Learned counsel for the petitioner submits that at the conclusion of the trial, the petitioner had been convicted in the above-noted FIR for the offence under Section 506 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'). He further submits that a child was born to the victim and the DNA profile of the child did not match with the DNA profile of the petitioner, but despite that the petitioner had been erroneously convicted. He also submits that the real culprit had been saved by the police and in terms of Section 19 of POCSO Act, it is necessary to order further investigation to pinpoint the accused. In support of his submissions, he

has relied upon judgments of the Supreme Court in **Dharam Pal Vs. State of Haryana and others, (2016) 4 Supreme Court Cases 160** and **State through Central Bureau of Investigation vs. Hemendhra Reddy & another, Criminal Appeal arising out of SLP (Crl.) Nos.7628-7630 of 2017 decided on 28.04.2023**; judgment of the High Court of Jammu & Kashmir and Ladakh in **Kewal Krishan and others vs. Union Territory of J&K, decided on 23.02.2024** and judgment of the High Court of Delhi in **Sri Desaraju Venugopal vs. Central Bureau of Investigation, 2022 LiveLaw (Del) 1156.**

3. Learned counsel for the respondent-State, while referring to the affidavit in reply, submits that the investigation had been properly conducted and after appreciation of evidence, the Trial Court had convicted the petitioner. He submits that even if the DNA profile of the petitioner did not match with the DNA sample of the child, that by itself could not be a factor to order further investigation in the matter.

4. Heard. Vide judgment of conviction dated 03.10.2022 passed by the Trial Court, the petitioner had been convicted in FIR No.120 dated 18.02.2018, Police Station Mujessar, Faridabad for commission of offence punishable under Section 506 IPC and Section 6 of POCSO Act and sentenced *inter alia* to undergo rigorous imprisonment for 20 years vide order dated 07.10.2022. Besides the petitioner, six other co-accused have also been convicted. Accused Laxmi, Jayanti and Raj Rani have been convicted for the commission of offence punishable under Sections 304-A, 338 and 120-B IPC and accused Ramla Sarkar, Parmod and Parbhanshu have been convicted for the commission of offence punishable under Sections 304-A, 338, 120-B, 420

IPC and Sections 3, 4 and 5 of Medical Termination of Pregnancy Act, 1971 read with Section 15 of Indian Medical Council, Act, 1956, as they were the members of hospital/nursing staff and they were negligent in providing proper care to the pre-mature baby. The petitioner has preferred an appeal bearing No.CRA-D-971-2023, which is pending adjudication before this Court. As the appeal filed by the petitioner is pending adjudication before this Court, it would not be appropriate for us to discuss the merits of the case against the petitioner at this stage.

5. We are referring to the facts of the case only for the purpose of deciding this petition seeking further investigation in the case. Further investigation in cases where the judgment of conviction has been passed is ordered in rare and exceptional cases, when the Appellate Court while hearing the appeal is of the view that gross injustice has been done and there are glaring lapses in the investigation. However, in the instant case, we do not find it to be rare and exceptional case warranting further investigation. Merely because the DNA profile of the petitioner did not match with the DNA sample of the child, cannot be a ground to order further investigation especially when the Court is yet to hear the appeal.

6. In the event we direct further investigation in the case at this stage, it may amount to hounding the victim and making her relive the ordeal she has gone through. Investigation to find out the father would also impinge on the privacy of the victim and may be violative of the right of privacy which in a facet of Article 21 of the Constitution of India guaranteeing the life and personal liberty.

7. The judgments relied upon by learned counsel for the petitioner are distinguishable on facts and not applicable to the instant case. In all those cases, further investigation had been ordered before the trial had concluded, either at the stage of filing of the closure report before the Trial Court or where the trial had not commenced. In two of those cases, the further investigation had been ordered after some of the witnesses had been examined, but before the trial had been concluded. Learned counsel for the petitioner has not been able to point out even a single judgment of any Court where further investigation in a case under POCSO Act or under Section 376 IPC has been ordered by the Court after the accused had been convicted in the matter and that too at the behest of the accused.

8. Therefore, we are of the considered view that this petition at the behest of the accused when he had been convicted under Section 6 of the POCSO Act, for further investigation is wholly misconceived and deserves to be dismissed at the threshold.

Petition stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

02.09.2024
jitender

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No