

2024:PHHC:118045



CRM-M-44668-2024
Date of Decision: 09.09.2024

RAGHU NANDAN ALIAS SURAJ

...Petitioner

Vs.

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM:- HON'BLE MRS. JUSTICE NIDHI GUPTA

Present: Mr. Vipin Mahajan, Advocate for the petitioner.

NIDHI GUPTA, J. (Oral)

The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, with a prayer to quash 31.07.2024 (P-6) order passed dated by Ld. Additional Session Judge Cum Judge, Special Pathankot Judge, in SC/132/2023 arising out of FIR No. 139 dated 09.10.2023 U/s 346 (Offence U/s 363, 366, 376 IPC and Section 6 of POCSO Act, 2012 added later on) registered at Police Station, (P-1) Division No2. Pathankot, Punjab, vide which cross examination by the petitioner of PW1 and PW2 has been treated as "NIL" and for issuance of directions to Ld. Trial Court to grant one opportunity to the petitioner for cross examination of PW1 and PW2.

2. Challenge in the present petition is to the order dated 31.07.2024, Annexure P-6, whereby cross-examination of PW-1 and PW-2, victim and mother of the victim, respectively, has been treated as NIL.

3. Learned counsel for the petitioner/accused, *inter alia*, argues that perusal of the zimni orders Annexure P-2, reveals that the matter has not been adjourned at the request of the counsel for the petitioner, in fact,



the matter has been adjourned on several dates and it was prosecution witnesses who were not present in Court and as such, passing of the impugned order is unfair and unjust. It is further submitted that in case the petitioner is not permitted to cross-examine the victim and complainant, then the petitioner would virtually stand convicted. Accordingly, it is prayed that the petitioner be granted one opportunity to cross-examine PW-1 and PW-2.

4. Notice of motion.

5. On the asking of Court, Ms. Guramrit Kaur, DAG, Punjab, accepts notice on behalf of respondent No.1-State and opposes the prayer made by learned counsel for the petitioner stating that victim is 14 years of age; and in view of the provisions of the POCSO Act, the victim cannot be called again and again to the trial Court for evidence.

6. I have heard learned counsel for the parties. Perusal of the zimni orders from 04.01.2024 till 01.07.2024 (Annexure P-2), reveals that case has not been adjourned each time on the request of the petitioner. In view of the above, the present petition is **allowed** with direction to the trial Court to grant one effective opportunity to the petitioner to cross-examine PW-1 and PW-2 subject to payment of ₹10,000 to be deposited by the petitioner with Poor Patients Welfare Fund, PGIMER, Chandigarh, within one week from today.

(NIDHI GUPTA)
JUDGE

09.09.2024

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