

2024:PHHC:138067

CRM-M-47948-2024 (O&M)
DATE OF DECISION : 22.10.2024

VIKRAM ALIAS VICKY

... PETITIONER

V/S

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Tarun Sharma, Advocate for the petitioner.

Mr. Amrik Singh Narwal, D.A.G., Haryana.

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HARPREET KAUR JEEWAN, J. (ORAL)

1. Prayer in the present petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) (for short 'Code') is to quash the order dated 08.07.2024 passed by the learned Addl. Sessions Judge, (Fast Track Special Court to try the offences of Rape and under POCSO Act), Kurukshetra in case bearing FIR No. 141 dated 02.06.2023 under Sections 363, 365, 366, 376AB and 376(m) IPC registered at Police Station City Pehowa, District Kurukshetra.

2. Learned counsel for the petitioner contends that he filed the application Annexure P-1, with the limited prayer that the petitioner-accused need immediate special medical attention and psychiatric treatment and also requested for conducting medical examination of the accused. It is further contended that the petitioner has though mentioned the provisions of Section

329 of the Code in the headnote but the petitioner has not made any prayer of taking benefit of the provisions under Section 328 of the Code. Learned counsel for the petitioner further contends that even in the present petition, the limited prayer of the petitioner is to provide medical treatment to the petitioner-accused, who is presently lodged in District Jail, Kurukshetra.

3. Notice of motion.

4. Mr. Amrik Singh Narwal, D.A.G., Haryana accepts notice on behalf of the State.

5. I have heard the counsel for the parties.

6. In view of the facts and circumstances on record and in view of the limited prayer made by the petitioner, filing of formal reply by the State is dispensed with.

7. The trial Court has dismissed the application by observing that the petitioner wants to take undue benefit of the provisions of Section 329 Cr.P.C., despite observing that the Medical Board has given the opinion that the petitioner is a man of “unsound mind at present”. While dismissing the application, it was observed that the petitioner was not obeying the commands, but his reflexes were okay. He was eating food without any help but he never demanded the same as per the observations of the doctors. He was even able to go for defecation and urination without any help. The trial Court was of the view that the petitioner was disobeying the commands in order to mislead the team of Doctors for drawing the conclusion that he was a man of unsound mind with ulterior motive and merely to draw undue benefit of the provisions of Section 329 Cr.P.C. The trial Court has also taken note of the observations made by the Board of Doctors that they

cannot comment about the previous state of mind of the petitioner as there was no clinical psychologist available in the LNJP Hospital, Kurukshetra.

8. The Medical Board consisting of 3 doctors had examined the petitioner on 09.01.2024, 25.01.2024 and 11.03.2024 and gave the observations of the current position which reflects that the patient was differentially diagnosed with Psychosis NOS/mental retardation/intellectual disability.

9. In view of such circumstances, the petitioner has a right of treatment, even though he is lodged in Jail. Consequently, the present petition is disposed of with a direction to the Superintendent, District Jail, Kurukshetra to arrange for providing requisite medical treatment to the petitioner under intimation to the trial Court.

22.10.2024

Janki

**(HARPREET KAUR JEEWAN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No