

2024:PHHC:108978



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

CRM-M-53645-2022 (O&M)
Reserved on: 20.08.2024
Pronounced on: 22.08.2024

Navjot Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vivek Salathia, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of the impugned order dated 10.06.2022 (Annexure P-3) passed by learned Secretary, District Legal Services Authority, Amritsar, whereby the petitioner being a victim was denied compensation in the case stemming from FIR No.371 dated 22.09.2016 under Sections 363, 366-A, 376, 342, 506 of the Indian Penal Code, 1860 (for short 'IPC') and Section 6 of the Protection of Children

2024:PHHC:108978



against Sexual Offences Act (for short 'POCSO Act'), registered at Police Station A-Division, Amritsar.

2. The facts, succinctly put, are that the petitioner, who was minor at the time of occurrence, was kidnapped and raped by convict-respondent No.4. Subsequently, the FIR (*supra*) was registered, the investigation was conducted and the trial commenced before learned Additional Sessions Judge/Exclusive Court, Amritsar and vide judgment of conviction dated 26.07.2018, respondent No.4 was convicted and vide order of sentence dated 26.07.2018, he was sentenced under Sections 363, 366, 343, 506 of IPC and Section 6 of POCSO Act. Further, as per the provisions of Section 357 Cr.P.C., the petitioner was granted compensation to the tune of Rs.20,000/-, which was to be paid out of the fine imposed upon the convict. Not satisfied with the compensation amount, the petitioner filed an application before the District Legal Services Authority, Amritsar (for short 'DLSA') in order to seek compensation in view of the National Legal Services Authority's '*Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018*' (for short 'NALSA Scheme') as well as the guidelines issued by the Hon'ble Supreme Court in ***Nipun Saxena and another Vs. Union of India and others, (2019) 13 SCC 715***. Vide impugned order dated 10.06.2022, respondent No.3-learned Secretary, District Legal Services Authority, Amritsar held that only learned Special Court, that convicted and sentenced the convict, can pass the order of

2024:PHHC:108978



compensation and adjourned the matter *sine die*. Hence, the instant petition.

3. Learned counsel for the petitioner submits that it is duly concluded vide judgment dated 26.07.2018 passed by learned Additional Sessions Judge/Exclusive Court, Amritsar that the petitioner was subjected to rape and sexual assault at the hands of the convict. Therefore, respondents No.2 & 3 ought to have granted compensation to the petitioner, to the tune of Rs.4,00,000/- to Rs.7,00,000/-, as mentioned in the schedule appended with the NALSA Scheme as well as in ***Nipun Saxena***'s case (*supra*). The NALSA Scheme also states that when the victim is minor, as the petitioner was at the time of the incident, limit of compensation would be 50% higher than the amount mentioned in the schedule. However, the petitioner has only been granted a meagre amount of Rs.20,000/- as compensation by learned trial Court under Section 357 Cr.P.C. Respondent No.2-District Legal Services Authority, Amritsar wields ample powers to appropriately compensate the victim, however, respondent No.3-learned Secretary, DLSA has fallen into grave error by consigning the application of the petitioner *sine die* vide impugned order dated 10.06.2022.

4. *Per contra*, learned State counsel, supported by the affidavit tendered on behalf of respondents No.2 & 3, submits that in view of the relevant provisions of POCSO Act, coupled with the observations made by the Hon'ble Supreme Court in ***Nipun Saxena***'s case (*supra*) leave no margin for

2024:PHHC:108978



doubt that it is only learned trial Court, which can award compensation in accordance with the NALSA Scheme. As such, the petitioner should have approached learned trial Court and not respondent No.2-DLSA or this Court to seek compensation. Further, the impugned order dated 10.06.2022 is well-reasoned and based on the correct appreciation of law, therefore, no interference is warranted by this Court.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that respondent No.4 has been convicted vide judgment dated 26.07.2018 and sentenced as follows:

<i>Offence under</i>	<i>Sentence</i>
<i>Section 363 IPC</i>	<i>Rigorous imprisonment for 07 years and a fine of Rs.5,000/-, in default of which, further rigorous imprisonment of 0 months</i>
<i>Section 366 IPC</i>	<i>Rigorous imprisonment for 10 years and a fine of Rs.10,000/-, in default of which, further rigorous imprisonment of 01 year.</i>
<i>Section 343 IPC</i>	<i>Rigorous imprisonment for 01 year.</i>
<i>Section 506 IPC</i>	<i>Rigorous imprisonment for 02 years.</i>
<i>Section 6 POCSO Act</i>	<i>Rigorous imprisonment for 10 years and a fine of Rs.20,000/-, in default of which, further rigorous imprisonment of 02 years.</i>

6. Evidently, learned trial Court had ordered that out of total fine amount of Rs.35,000/- imposed upon respondent No.4, Rs.20,000/- be paid to

2024:PHHC:108978



the petitioner as compensation under Section 357 Cr.P.C.

7. A perusal of the NALSA Scheme indicates that the explanation to Section 18 categorically states that the scheme shall not be applicable to the minor victims under POCSO Act. In fact, the same is to be dealt with by learned Special Courts only in accordance Section 33(8) of POCSO Act, 2012 and Rule 7 of POCSO Rules, 2012. As such, the petitioner was required to approach learned trial Court since respondent No.2-DLSA is not authorised to grant compensation in cases pertaining to POCSO Act. The relevant provisions read as follows:

“Section 33 of the POCSO Act
Procedure and powers of Special Court.

xxx

xxx

xxx

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

Rule 7 of the POCSO Rules, 2012

Compensation -

(1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case

2024:PHHC:108978



ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with subsections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;*
- (ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;*
- (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;*
- (iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;*
- (v) the relationship of the child to the offender, if any;*
- (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;*
- (vii) whether the child became pregnant as a result of the offence;*
- (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;*
- (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;*
- (x) any disability suffered by the child as a result of the offence;*
- (xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;*

2024:PHHC:108978



(xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.

8. In view of the above provision of law, present petition is dismissed. However, the petitioner shall be at liberty to pursue the alternate remedies as available to her, in accordance with law.

[HARPREET SINGH BRAR]
JUDGE

22.08.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No