



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.49907 of 2024 (O&M)
Date of decision: 04.10.2024

Kulvir Ram @ Mati ...Petitioner

Versus

State of Punjab and Another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vansh Chawla, Advocate
for the petitioner.

Ms. Swati Batra, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
43	02.05.2018	Sadar Nawanshahar	452, 324, 109 IPC

1. Aggrieved by the trial Court permitting witnesses to appear through video conference through WhatsApp or other electronic channel, the accused has come up before this Court seeking quashing of impugned order dated 04.09.2024.
2. Notice served upon the official respondent(s) through State counsel.
3. The nature of the order this court proposes to pass is such that no response is required from the complainant or the State.
4. I have heard learned counsel for the petitioner and counsel for the State of Punjab. I have also gone through the pleadings, and their analysis would lead to the following outcome.
5. Vide order dated 18.07.2024, the trial Court has decided on an application to record the statement of witness Sunita Rani through video conference. The Court also noted that another witness, Jaspal's statement/ cross examination is yet to be recorded. The Court also directed procurement of photocopies of the witnesses' passports and permitted both witnesses to appear through VC as per the rules and regulations of the Court.



6. The trial Court referred to General Principles governing video conferencing as well as the model rules of video conference and also asked a letter to be written to the concerned Embassy through Ministry of Law and Justice to be sent through email requesting them to arrange recording of the statements of witnesses through the electronic channel. Even the witnesses were also directed to approach the Indian High Commission/ Embassy and get their statements recorded on 17.08.2024.

7. Further, vide the impugned order dated 04.09.2024, the trial court disposed of an application filed by the complainant, mentioning that the witness could not get her statement recorded through the embassy. The complainant sought permission from the court to get their statements recorded through ordinary VC i.e., through WhatsApp and other electronic channels and also submitted that they would prove their identity with the help of their passport and ID. The Court allowed such an application by permitting the witnesses to get their statements recorded through video conference, and the public prosecutor was asked to arrange the time and date for recording of such statements.

8. Aggrieved by the permission to record the statement through ordinary video conference i.e., WhatsApp or other electronic channels, and not through an embassy, the petitioner had now come up before this Court under Section 528 BNSS.

9. The counsel for the accused argued that in case the witnesses appear through WhatsApp or other video conference, someone can impersonate them and they can be tutored. He submits that the witnesses' statements be recorded only through the office of the Indian embassy in the concerned country. Counsel further submits that rules for video conference do not permit it and that statements have to be recorded only as per the rules. He further submits that rules cannot be by-passed and have to be followed in letter and spirit, and for ready reference, video conferencing rules have been annexed at Annexure P-4.

10. As per sub rule 5.3.1., for overseas persons, there is one Coordinator at remote point who is an official of an Indian Consulate/ relevant Indian Embassy/ the relevant High Commission of India when a witness or a person accused of an offence is to be examined.

11. However, rule2(viii) of Video Conference Rules reads as follows:

“(viii) Exceptional circumstances” include illustratively a pandemic, natural calamities, circumstances implicating law and order and matters relating to the safety of the accused and witnesses.”



12. It would be appropriate to refer to rule 8.15 which reads as follows:

“8.15 Where a Required Person is not capable to reaching the Court Room or the Remote Point due to sickness or physical infirmity, or presence of the required person cannot be secured without undue delay or expense, the Court may authorize the conduct of video conferencing from the place at which such person is located. In such circumstances the Court may direct the use of portable video conferencing system. Authority in this behalf may be given to the concerned Coordinator and/ or any person deemed fit by the Court.”

13. In the present case, the witness expressed her difficulty in travelling to Indian embassy, i.e., the Coordinator at the remote point.

14. The only interest of any witness is to help in the cause of justice, and in return, it would be highly unfair if the Court puts such witnesses to unnecessary difficulties, expenditure, or inconvenience when the witnesses themselves have expressed their desire to appear through the ordinary course of video conference and not through embassy. If this Court forces them not to visit the Indian Embassy, given the reluctance of the witness to travel to the Embassy, would cause lack of interest, unnecessary hardships and expenditure to such witnesses. Given the fact that prosecution has been launched against the petitioner, in such a situation, even the petitioner accused cannot be burdened with such cost. What is requirement from the side of person where examination is to be done, has been dealt in para No.3(vii) which reads as follows:

“The person defined in Rule 2(xii) shall provide identity proof as recognized by the Government of India/ State Government/ Union Territory to the Court point coordinator via personal email. In case identity proof is not readily available the person concerned shall furnish the following personal details: name, parentage and permanent address, as also, temporary address if any.”

15. Given the above, in the peculiar facts and circumstances, it was fully justified for the trial Court concerned to have permitted the recording of the statement of the witnesses through ordinary video conference/ WhatsApp video call. This Court does not find any illegality in the said order, and instead, it appears to be well reasoned and in sync with ground realities keeping in mind the end to end encryption and other in safety mechanisms of that application.

16. However, it is clarified that at the time of video conference, the camera should cover most of the area of the room, and it should be in such a view that the witnesses are not tutored in any manner or put under any threat, fear or duress. The witnesses shall be identified by checking their identities on the same WhatsApp no. from which they are contacted for such call or through the same email IDs from where



they are contacted on ascertaining their identity, and the remaining statements will be recorded following the rules already in place.

The petition is **disposed of** in terms as mentioned above.

(ANOOP CHITKARA)
JUDGE

04.10.2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: No.