

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

106

CRM-M-61696-2023

Date of Decision: January 18, 2024

Shilpa

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ajay Vijrania, Advocate for the petitioner(s).

Mr. Surinder Kumar Dagar, DAG, Haryana.

Mr. R.A. Sheoran, Advocate for the complainant.

SUDEEPTI SHARMA J. (ORAL)

The present petition has been filed under Section 407(2) Cr.P.C. for setting aside the order dated 08.11.2023 vide which the Transfer Application in case bearing CIS No.SC/181/2023 titled as ***State of Haryana Vs. Ashish and others*** from the Court of Ld. Additional Sessions Judge, Bhiwani to some other Court, has been dismissed.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner has an apprehension that she would not be getting fair trial and justice from the Court of Ld. Additional Sessions Judge, Bhiwani and prays for transfer of the case from that Court.

3. I have heard learned counsel for the petitioner and perused the impugned order.

4. The brief facts of the case are that the petitioner is a complainant/prosecutrix in FIR No.44 of 2023, under Sections 366, 354-B,

376 IPC, registered at Police Station Women, Bhiwani and the trial is going on before the Court of Ld. Additional Sessions Judge, Bhiwani.

5. A perusal of the impugned order shows that the transfer application bearing No.173 of 2023, titled as ***Shilpa Vs. State of Haryana*** has been decided by passing a speaking order. The relevant portion of the impugned order is reproduced as under:-

“6. In the case in hand, bail application bearing No.222 of 2023 having CNR No.HRBH010062692023(CIS No.BA/908/2023) titled as Ashish vs. State of Haryana of accused Ashish was dismissed by the court of Sh.K.PSingh, the learned Additional Sessions Judge, Bhiwani on 12.06.2023, thereafter he filed bail application before the Hon'ble Punjab and Haryana High Court and it was withdrawn on 28.07.2023 in CRM-M- 32050 of 2023 titled as 'Ashish Kumar @ Ashish Vashisht vs. State of Haryana, afterwards, accused Ashish filed second bail application before the court of Sh.K.P.Singh, learned Additional Sessions Judge and it was dismissed as withdrawn vide order dated 11.08.2023. Vide order dated 01.05.2023, the co-accused Pawan was granted bail by the learned Presiding Officer. Vide order dated 25.05.2023 passed in Bail Application No.175 of 2023 having CNR No HRBH010057272023 (CIS No.BA/751/2023) titled as 'Sushil @Soni vs. State of Haryana, the co- accused Sushil alias Sonu was allowed bail by the learned Presiding Officer. In Sessions case titled as 'State of Haryana vs. Ashish and others charge was framed against the accused vide order dated 04.08.2023 passed by Sh. K. P.Singh, the learned Additional Sessions Judge, Bhiwani As per list of witnesses, out of 27 prosecution witnesses, 11 witnesses

have been examined and the case is now fixed for 08.11 2023 for remaining prosecution evidence.

7. It is pertinent to mention here that vide order dated 12.06 2023 passed in bail application No.222 of 2023 having CNR No.HRBH010062692023 (CIS No.BA/908/2023) while declining the bail application of accused Ashish, it was observed by the learned Presiding Officer that "prosecutrix is yet to be examined and sexual relations between prosecutrix and the applicant/accused are consensual or not cannot be decided at this stage", as discussed above, she as well as her mother have not been examined till now and have been summoned for 08.11.2023. It appears that instead of their examination in the court on the date fixed, the complainant has filed the present application for transfer of aforesaid mentioned Sessions Case and bail application of accused Ashish in order to delay the trial as well as disposal of bail application. Thus, under such circumstances of the case, I am of the considered opinion that except bald and unsubstantiated allegations that accused party approached the learned Presiding Officer for favourable decision, nothing substantial has come on record to suggest that justice will not be dispensed with impartially, objectively and without any bias. Accordingly, on the basis of allegations as contained in the application, it cannot be said that there is genuine apprehension in the mind of the applicant that justice will not be done.

8. In view of discussion made above, I find no substance in the application and accordingly, the same is hereby dismissed. Summoned files be sent back with a copy of this order and transfer application file be consigned to records.

6. A perusal of the above order shows that the trial is going on at a normal pace and as mentioned in the order, 11 witnesses out of 27 have been examined. However, it has been observed by the learned Sessions Judge, Bhiwani, that the case was fixed for 08.11.2023 for examination of the prosecutrix and her mother but the prosecutrix and her mother intentionally did not appear for their evidence despite issuance of summons and bailable warrants. Further that since, the case was adjourned to 08.11.2023 and counsel for the complainant as well as SHO/Investigating officer were directed specially to ensure the presence of prosecutrix and her mother for 08.11.2023 for completion of their evidence, but prior to 08.11.2023, with an intention to prolonged the trial as well as disposal of bail application of the accused-Ashish, the application for transfer of trial bearing CIS No.SC/181/2023 titled as '*State of Haryana Vs. Ashish and others*' was filed.

7. In view of the discussion made hereinabove, I do not find any infirmity in the impugned order dated 08.11.2023, therefore, the present petition filed under Section 407(2) Cr.P.C. for setting aside the same, is hereby dismissed.

8. All pending applications, if any, stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 18, 2024
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Whether speaking/reasoned:	Speaking
Whether reportable:	Yes / No