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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 4155/2024 & CRL.M.A. 15761-763/2024**

SHIV SHARMA Petitioner

Through: Mr. Sahil Goel, Advocate.

versus

STATE NCT OF DELHI Respondent

Through: Ms. Shubhi Gupta, APP for the State
with W/SI Sanju, PS: North Rohini.

Mr. Ankit Rana, Advocate for the complainant.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

21.05.2024

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1. This petition has been preferred on behalf of the Petitioner under Section 482 Cr.P.C. seeking the following reliefs:-

“a. Set aside or reverse the impugned order dated 16/02/2024 passed by the Hon’ble Court of Ms. Susheel Bala Dagar, Additional Sessions Judge-01, (POCSO), North West, Rohini District Court, Delhi in case titled as “State vs Shiv Sharma” in FIR No. 363/2017 under Section 376/377/506 IPC & Section 8 POCSO Act at Police Station North Rohini and thereby directing the Investigating Officer/Concerned Police Officials of PS North Rohini to send the mobile phone of the Accused/Petitioner i.e. Apple I Phone make I Phone 5S having IMEI number 359208072128602, to Forensic Laboratory for giving extraction report wherein video/footage in question received on the mobile of the Petitioner/Accused on 24/08/2017 and not prior to that and further direct Director, Prosecution to file extraction report, after due investigation, to the extent of knowing the source, relevant time and showing incoming of Relevant Video/Footage and the report as to the Whatsapp messages exchanged between Ms. Rita Java from her mobile phone i.e. XXXXXXXX363 and the Petitioner/Accused i.e. 9871061566 and further direct Director Forensic to expedite the same, in the interest of justice;

b. Stay the proceedings of the trial court in the case titled as “State vs Shiv Sharma” in FIR No. 363/2017 under Section 376/377/506 IPC & Section 8 POCSO Act at Police Station North Rohini bearing SC No. 761/2017 pending trial in the Hon’ble court of Ms. Susheel Bala Dagar, Additional Sessions Judge-01, (POCSO), North West, Rohini District Court, Delhi till the pendency of the present petition;



c. Summon trial court record in the case titled as “State vs Shiv Sharma” in FIR No. 363/2017 under Section 376/377/506 IPC & Section 8 POCSO Act at Police Station North Rohini bearing SC No. 761/2017 wherein Hon’ble Court of Ms. Susheel Bala Dagar, Additional Sessions Judge-01, (POCSO), North West, Rohini District Court, Delhi was pleased to dismiss the application of the Petitioner/Accused filed under Section 173 (8) of Code of Criminal Procedure, 1973 vide impugned order dated 16/02/2024.”

2. Petitioner is an accused in case FIR No. 363/2017 registered on 25.08.2017 under Sections 376/377/506 IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 at PS: North Rohini, which is pending trial. Matter is at the stage of Prosecution evidence. On 29.01.2024, Petitioner filed an application under Section 173(8) Cr.P.C. for a direction to the Investigating Officer to send his mobile phone Apple iPhone 5S having IMEI No.359208072128602 to FSL for investigation and file extraction reports with respect to source, time and date of the alleged video sent to the victim’s phone and also to show whether the video was received on the phone of the Petitioner on 24.08.2017 and not prior thereto. By order dated 16.02.2024, Trial court dismissed the application and the order is assailed in this petition.

3. Present FIR was registered on the complaint of the victim who alleged that the Petitioner, who was her tuition teacher, touched her inappropriately after the classes and on her resistance, showed her a video where a young girl was burnt by few men and threatened her. Petitioner urged in the application that on 25.08.2017, present FIR was registered on the complaint of the victim and pursuant thereto on 26.08.2017, mobile phone of the Petitioner being Apple iPhone 5S was seized vide seizure memo dated 26.08.2017. Mobile phone was sent to the FSL for a report on whether WhatsApp messages were exchanged between the victim and the Petitioner on the said phone. The alleged video footage was for the first time received



on mobile phone of the Petitioner only on 24.08.2017 and was sent by one Ms. Rita Java from her mobile phone via mobile no. XXXXXX3363 to the Petitioner on his mobile number i.e. XXXXXX1566 through WhatsApp. Therefore, the Petitioner could not have shown the said video to the victim on any date prior thereto and this would be proved by calling for an extraction report from the FSL, in respect of his phone which is already seized and lying in police custody. Thus, according to the Petitioner, the application has been erroneously dismissed by the Trial Court.

4. Issue notice.
5. Learned APP accepts notice on behalf of the State.
6. Perusal of the impugned order shows that the Trial Court examined the application and dismissed the same on the ground that FSL report regarding the mobile phone of the Petitioner had been received, as per which the phone was password protected and no video files could be retrieved from the SIM marked as SC1. Data has been extracted and analysed and it would now be a matter of evidence and arguments, based on the forensic examination carried out, whether the video was allegedly sent on 24.08.2017 or any date prior thereto. Trial Court has rightly concluded that it is not for the Court to direct investigation in a particular manner and issue directions to the IO to re-send the phone for another extraction report. No infirmity can be found in the order of the Trial Court dismissing the application.
7. Petition is accordingly dismissed along with the pending applications.

JYOTI SINGH, J

MAY 21, 2024/shivam