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

CRR-2072-2023(O&M)

Date of Decision:-29.04.2025

Ash Mohammad

...Petitioner

Vs.

Talim and Anr.

...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Tushar Gautam, Advocate for petitioner.

Ms. Ambika Sood, Addl. A.G., Haryana.

AMARJOT BHATTI, J.

1. The petitioner – Ash Mohammad has filed present criminal revision against impugned order dated 26.07.2023 vide which application filed under Section 319 Cr.P.C. for summoning of additional accused Talim son of Badlu has been declined by the court of learned Additional Sessions Judge, (Fast Track Special Court for Trial of Offences under POCSO Act), Nuh.

2. As per the facts of case narrated in FIR No.46 dated 07.02.2020, Police Station City Nuh (Annexure P-1), complainant Ash Mohammad gave his statement that on 05.02.2020, he woke up at 6:00 AM and found that his minor daughter i.e. victim aged about 17 years was not present in the house. He along with his family members tried to find out her whereabouts at their own level. He had fixed marriage of his elder daughter for 10.02.2020 and had kept cash of Rs.8,17,000/- in the almirah.

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On checking of almirah, it was found that said money along with one gold ear ring (01 tola) were found missing. Finally, the matter was reported to the police and FIR was registered under Section 346 of IPC.

During investigation the victim was recovered and she was produced before learned Judicial Magistrate Ist Class, Nuh for recording of her statement under Section 164 Cr.P.C. Investigation was completed and offences under Section 354, 34 of IPC and Section 10 of POCSO Act were added by deleting the offence under Section 346 of IPC. On completion of investigation, accused Juber, Anis and Nafis were challaned whereas names of accused Hamidi and Talim were kept in column No.2 of the challan. After recording of prosecution evidence, prosecution filed application under Section 319 Cr.P.C. which was ultimately declined by learned trial Court by passing impugned order dated 26.07.2023. Feeling aggrieved of this order, present criminal revision has been filed.

3. Learned counsel for petitioner argued that consistently there were specific allegations against Talim son of Badlu in the statement of victim recorded under Section 164 Cr.P.C. (Annexure P-2). During the proceedings of trial, her statement was recorded as PW-3 which is Annexure P-3 where she confirmed the allegations levelled against Talim. Specific role was attributed to him. Despite this fact, learned trial Court without appreciating the facts and the aforesaid statements of the victim, declined the application vide impugned order dated 26.07.2023. It is pointed out that learned trial Court has given undue weightage to the investigation carried out by the Deputy Superintendent of Police by whom, Talim was found innocent. The impugned order dated 26.07.2023 is not on

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sound footing. There was no valid reason to disbelieve the version of victim. Therefore, present criminal revision filed by petitioner may be accepted and the impugned order dated 26.07.2023 passed by learned trial Court may kindly be set aside.

4. Learned counsel representing State filed status report confirming the factual position. It is confirmed that the victim was recovered on 11.02.2020 and thereafter, she was produced before learned Illaqa Magistrate on 12.02.2020 and her statement was recorded under Section 164 Cr.P.C. (Annexure R-1). It is confirmed that in the said statement, the victim had named Juber, Anis and Nafis sons of Idreish, Hamidi wife of Badlu and Talim son of Badlu as accused. After completion of investigation, challan was presented against the accused who was arrested and supplementary challan was presented against Anis and Nafis on their arrest. It is confirmed that Hamidi and Talib were kept in column No.2 as they were found innocent. It is matter of record that application filed by petitioner for summoning of Talim son of Badlu has been declined by passing the impugned order dated 26.07.2023. Therefore, factual position on record is not disputed by learned State counsel.

5. I have considered the arguments and have gone through the record carefully. Petitioner filed application under Section 319 Cr.P.C. for summoning of additional accused during the pendency of the trial. It is matter of record that on recovery of victim her statement was recorded under Section 164 Cr.P.C. (Annexure P-2). During pendency of the trial, she again stepped into the witness box as PW-3 (Annexure P-3). I have carefully gone through the aforesaid statements in which the version of

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victim has remained consistent qua the role played by Talim. She categorically stated that it was Talim who provided her mobile phone bearing SIM No.8930277617 and on this mobile phone she used to talk to Juber. She further alleged that Talim gave her sleeping pills for mixing it in the milk to be given to her family members on the day she left the house. Even after the victim left her parental house, Talim actively participated along with other co-accused. Learned trial Court while disposing of application under Section 319 Cr.P.C. without any valid justification has ignored the consistent statement of victim recorded from time to time. It is rightly pointed out that learned trial Court has given undue emphasis to the investigation conducted by Deputy Superintendent of Police. There is nothing on record to show on what basis Talim was found innocent during investigation. In view of the aforesaid factual position, impugned order dated 26.07.2023 is accordingly set aside by accepting the present criminal revision and learned trial Court is directed to decide application under Section 319 Cr.P.C. afresh.

6. Criminal revision petition is accordingly disposed of.

7. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

29.04.2025*Sunil Devi***(AMARJOT BHATTI)**
JUDGEWhether speaking/reasoned:
Whether reportable:Yes/No
Yes/No