2024 INSC 909

REPORTABLE

IN THE SUPREME COURT OF INDIA

EXTRAORDINARY APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 13378 OF 2024

X **Petitioner(s)**

VERSUS

STATE OF RAJASTHAN & ANR. **Respondent(s)**

O R D E R

1. This petition arises from the impugned order passed by the High Court of Judicature for Rajasthan at Jodhpur dated 12-02-2024 in SB Criminal Miscellaneous Bail Application No.1351/2024 by which the bail application filed by the Respondent No.2 – herein (original accused) came to be allowed and the Respondent No.2 was ordered to be released on bail pending trial.

2. It appears from the materials on record that a First Information Report came to be lodged by the petitioner – herein dated 18-09-2023 against the Respondent No.2 – herein and a co-accused for the offence punishable under Section 376D and Section 342 of the Indian Penal Code. The FIR bearing No.83/2023 was registered with Police Station Nachna, District Jaisalmer, Rajasthan.

3. The Respondent No.2 – herein and the co-accused were arrested in connection with the alleged offence. The co-accused was ordered to be enlarged on bail long time back.

4. It appears that after the FIR was registered, the statement of the victim, i.e., the petitioner – herein was recorded by the Magistrate under Section 164 of the Code of Criminal Procedure, 1973.

5. Upon conclusion of the investigation, charge-sheet was filed.

6. The criminal case being committed to the Court of Sessions came to be registered as the Sessions Case No.53/2023 pending as on date in the Court of Additional District and Sessions Judge, Pokaran (Jaisalmer).

7. The prosecution has examined one witness so far.

8. In the midst of the trial, the Respondent No.2 – herein preferred a bail application before the Trial Court. The Trial Court declined to release the accused on bail.

9. The accused went before the High Court and prayed for bail.

10. The High Court took into consideration some discrepancies emanating between the FIR and the statement of the victim recorded under Section 164 of the Code. The High Court was persuaded to release the Respondent No.2 – herein on bail.

11. Having regard to such discrepancies in the FIR and the statement recorded under Section 164 of the Code, the operative part of the impugned order passed by the High Court reads thus:-

> *"Para 9. Accordingly, the instant bail application under Section 439 Cr. P.C is allowed and it is ordered that the accused-petitioner as amed in the cause title shall be enlarged on bail provided he furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so."*

12. In such circumstances, referred to above, the petitioner, i.e., the victim is here before us with the present petition.

13. We have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the State. The Respondent No.2 – accused although served with the notice issued by this Court, yet has chosen not to remain present before this Court either in-person or through an Advocate and oppose this petition.

14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct

practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.

17. In the case on hand, the victim is yet to be examined. Her mother who, according to the case of the prosecution, is an eye-witness has also not been examined so far. The High Court seems to have looked into few discrepancies in the FIR compared to the statement of victim recorded under Section 164 of the Code. This could not have been a good ground to exercise discretion in favour of an accused in a serious offence like rape.

18. However, we are of the view that now at this point of time, we should not disturb the impugned order passed by the High Court. At the same time, we should impose appropriate conditions so as to ensure that the Respondent No.2 – herein and the co-accused do not influence the prosecution witnesses or try to tamper with the evidence in any manner. Even while enlarging the accused on bail, the High Court should have been conscious of this fact. The High Court has thought fit to only ask the Respondent No.2 - accused – herein to furnish solvent surety of an amount of Rs. 50,000/- without imposing any appropriate conditions.

19. We wonder if the High Court was made aware of the fact that the victim and her mother as well as both the accused are residing in the very same village viz. Magriyan Ki Dhani Satyaya, District Jaisalmer, Rajasthan.

20. In such circumstances, without disturbing the order of bail passed by the High Court, we direct that the Respondent No.2 – herein shall not enter the said village till the completion of the trial. As we have asked the respondent No.2 – accused not to enter the village, he shall furnish address of his new residence to the investigating officer

attached with the concerned police station. The Respondent No.2 shall not try to influence any of the prosecution witnesses in any manner or directly or indirectly try to contact the victim and her family.

21. Having regard to the nature of the alleged crime, it will be in the fitness of things if the Trial Court gives some priority to the Sessions Case No.53/2023 and try to dispose it of within a period of three months from today.

22. We clarify that what has been observed by us in this order are just *prima facie* observations and shall not be considered as an expression of any final opinion as regards the guilt or innocence of the accused.

23. The Special Leave Petition is disposed of in above terms.

24. Pending applications, if any, also stand disposed of.

.....J.
(J.B. Pardiwala)

.....J.
(R. Mahadevan)

New Delhi;
27th November, 2024