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

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**Decided on: 12.12.2023**

+ **CRL.M.C. 8770/2023**

JASPREET KAUR

..... Petitioner

Through: Mr. B.S. Rajesh Agrajit, Ms. Priya Nagar, Mr. Siddharth Goswami, Mr. Akash Sharma and Mr. Vaibhav Vats, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Satish Kumar, APP for the State with WSI Aarushi Rajput, P.S.: Khyala.

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

### **JUDGMENT**

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**SWARANA KANTA SHARMA, J. (ORAL)**

**CRL.M.A. 32740/2023 (exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

**CRL.M.C. 8770/2023**

3. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (*Cr.P.C.*) has been instituted on behalf of the petitioner, impugning order dated 18.10.2023, passed by learned Additional Sessions Judge-01, (FTSC) (POCSO)-01, West District, Tis Hazari Courts, Delhi.

**FACTUAL BACKDROP**

4. Brief facts of the case are that the present FIR bearing no. 311/2023 came to be registered on 24.06.2023, under Sections 376/376D/34 of the Indian Penal Code, 1860 (*IPC*), and under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (*POCSO Act*), at Police Station Khyala, Delhi. The contents of the FIR reveal that the victim aged about 16 years, who was studying in 10<sup>th</sup> standard, was acquainted with the accused Simarjeet Singh Viridi, through Instagram. It is alleged by the victim that the accused had contacted and informed the victim that he was near her residence, and he had then gained entry into her home, under the pretext of causal greetings. Thereafter, two other persons namely Gurkirat Singh Sandhu and Satnam Singh Sandhu, who were known to her as they were also residents of the same area and Gurkirat



Singh Sandhu was her brother-in-law, had also entered her home. Upon entering her house, all the accused persons had committed rape upon the victim and had also prepared a video-recording of the same. Thereafter, they had also threatened her, that if she would raise alarm, they will post the video and send it to many other persons. It is stated in the present petition that after partially recovering from the mental and physical trauma of the sexual assault, the victim, who was in a confused state of mind, had disclosed to her mother only on 21.06.2023 that three above-named persons had come to their house on 29.05.2023, and had committed rape upon her. Thereafter, the present complaint was filed on 24.06.2023 and the FIR was registered. The victim was medically examined at DDU Hospital, Delhi, and her statement under Section 164 of Cr.P.C. was recorded on 25.06.2023. During the course of investigation, the CCTV footage of the spot, of the date of alleged incident i.e. 29.05.2023, was also collected by the investigating officer. Chargesheet was filed against the three accused persons under Sections 376/376D/506/34 of IPC and Section 6 of POCSO Act.

5. Vide the impugned order, the learned Trial Court was pleased to dismiss the application filed by the victim under Section 91 of Cr.P.C., wherein the victim had sought preservation of CCTV footage of 02.05.2023, and also preservation of CDRs of the accused persons, from January, 2023 to May, 2023.



### **THE CASE OF PETITIONER**

6. It is the case of the victim and the petitioner i.e. her mother, that the Investigating Officer (I.O.), instead of arresting the above named accuseds and taking further action, had started torturing, harassing and pressurizing the petitioner and her family on a regular basis to withdraw the case. Therefore, a complaint was made to the DCP, Janak Puri, against the I.O. for threatening, intimidating and pressurizing the petitioner and her minor daughter on regular basis to withdraw the complaint, and also for demanding Rs. 3,000/-, for recording her minor daughter's statement. It is stated that when the petitioner had gone to the Police Station on the call of the I.O., she had found that the accused persons were also present in the police station. She had also come to know that they had now been implicated in a false and frivolous FIR bearing no. 340/2023 dated 05.07.2023, under Sections 376/354 of IPC and under Sections 6/8/21 of POCSO Act, registered at the behest of accused persons in present case, in order to pressurize the petitioner and her family to withdraw the present case. It is also stated that the I.O. had damaged the mobile phone of the petitioner and the victim, wherein the relevant videos and evidence related to FIR No. 311/2023, had been recorded. It is stated that the petitioner and her husband have been falsely implicated by their second daughter who had got married to Gurkirat Singh Sandhu, who is the brother-in-law of the victim and son-in-law of the petitioner; and who had committed rape upon the victim in the present case, and had then got an FIR No. 340/2023 registered as a counter-blast to the present FIR.



7. It is stated that the victim has been under the care of Institute of Human Behaviour and Allied Sciences (IHBAS) since 10.08.2023, and after improvement in her mental health, she had promptly clarified the confusion regarding the dates of incident, confirming that the alleged incident had taken place on 02.05.2023. It is also stated that when the petitioner had got the clarification of the date of incident from her minor daughter, she had filed an application under Section 91 of Cr.P.C. before the learned Trial Court, for issuance of necessary directions to the concerned I.O., to collect the CCTV footage of 02.05.2023, of the backside of the house of petitioner where two cameras of Delhi Government are installed, and also to collect the CDR of the accused persons from January 2023 to May 2023. The petitioner had also attached a copy of serial numbers and respective addresses of the relevant cameras to recover the evidence. It is stated that on 09.10.2023, the I.O. had filed the status report before the learned Trial Court, in which it was clearly mentioned that if the learned Trial Court will direct, she would procure CDR details of all the accused persons, from January to May, 2023.

8. Learned counsel for the petitioner states that on 18.10.2023, the learned Trial Court had dismissed the application preferred on behalf of the victim under Section 91 of Cr.P.C., on the premise that the incident mentioned by the victim as per her statement and complaint was of 29.05.2023; and therefore, no ground was made out for procuring the CCTV footage of 02.05.2023, and no ground was



also made out for preservation of CDRs of accused persons from January 2023 to May 2023.

9. It is argued by the learned counsel for the complainant that the learned Trial Court did not appreciate that after experiencing the trauma of rape, the victim was in a state of extreme distress, and was overwhelmed with fear, and she had mistakenly stated the date of incident as 29.05.2023, instead of actual date, i.e. 02.05.2023. It is also argued that the learned Trial Court had failed to consider the fact that victim is a minor, and has experienced significant impact of this traumatic incident, which has taken a toll on her mental health, and all these facts including the fact that she was being treated at IHBAS was mentioned in the application filed before the learned Trial Court. It is also stated that no prejudice would be caused to the accused persons in case the CDR details of the relevant time and CCTV footage of the actual day of incident are preserved and produced at the relevant stage of trial. It is also argued that the I.O. has seized the mobile phone of victim, after the accused Simarjeet Singh had sent her a video, and had subsequently deleted the same in an effort to aid the accused persons. It is also argued that during the investigation, the I.O. was intimated that the actual date of incident was 02.05.2023, yet she had conveniently informed the learned Trial Court that no specific allegation had been made regarding the date of 02.05.2023. It is submitted that the learned Trial Court has erroneously relied upon the fact that the I.O. had stated that there was no allegation of the incident occurring on 02.05.2023, whereas in the application filed under Section 91 of Cr.P.C., it was specifically



mentioned that the incident had actually taken place on 02.05.2023, which was disclosed later by the victim, after she had partially recovered from her mental trauma. It is also stated that the learned Trial Court has failed to appreciate the dictum of *State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568*, wherein the Hon'ble Apex Court had explained the scope of powers under Section 91 of Cr.P.C. and the duty to exercise the power considering its necessity or desirability.

10. It is therefore prayed that the CCTV footage dated 02.05.2023 and the CDRs of the accused persons from January 2023 to May 2023, which will significantly clarify the present case in every aspect, be preserved and that in case the application is not allowed, grave prejudice will be caused to the petitioner.

11. This Court has heard arguments addressed by learned counsel for the petitioner, and has perused the material placed on record.

### **ANALYSIS AND FINDINGS**

#### ***i. The Impugned Order***

12. In the present case, the application filed under Section 91 of Cr.P.C. on behalf of the victim was dismissed by the learned Trial Court vide order dated 18.10.2023, which is impugned before this Court. The relevant portion of the said order reads as under:

“Clarifications sought from the IO.

Reply has been received from the IO stating that victim has reported the incident of 29.05.2023 and CCTV footage has already been seized. It is further clarified by the IO



that at present there is no allegation of happening of incident on 02.05.2023.

Keeping in view the fact that the incident has mentioned by the victim as per the statement and complaint dated 29.05.2023, no ground is made out of seizing the CCTV footage of dated 02.05.2023.

Further, since the statement of the complainant/ complaint shows that the incident only pertains of 29.05.2023, no ground is made out for preservation of CDRs of the accused persons from January 2023 to May 2023.

Accordingly, the application stands disposed of as dismissed.”

*ii. Law of Section 91 of Cr.P.C.*

13. For necessary reference, Section 91 of Cr.P.C. is extracted hereunder:

**“Section 91. Summons to produce document or other thing.**

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed--

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”





14. The Division Bench of Hon'ble High Court of Madhya Pradesh in case of *Special Police Establishment v. Umesh Tiwari* 2022 SCC OnLine MP 100 had enlisted the ingredients of Section 91 of Cr.P.C., and had also observed that the right to invoke Section 91 is not limited only to the Court and Police, but also to the victim, accused and/or any other stakeholder. The relevant observations are reproduced hereunder for reference:

“4.3 Language employed in Section 91 reveals following foundational ingredients and characteristics:-

- (i) Section 91 is meant to be invoked for producing documents/other things by way of summon.
- (ii) Section 91 can be invoked at any stage of investigation, inquiry, trial or even other proceedings under the Cr.P.C.
- (iii) Section 91 does not expressly provide as to who can invoke this provision.
- (iv) However, the language of Section 91 implies that it can be invoked by the Court or the Officer in-charge of the Police Station concerned.
- (v) And this invocation can be done when the Court or the Police is of the view that production is necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under Cr.P.C.
- (vi) The satisfaction regarding necessity or desirability of the Court or the Police is sine qua non for invoking this provision.
- (vii) The production of document or other thing is to be made before the Court if directed by the Court or before the officer if directed by Police Officer.

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4.5 From the aforesaid analysis, it is vivid that it would not be proper to restrict the right to invoke Section 91 to only the Court and the Police Officer. The window of Section 91 will have to remain open for all the stakeholders in an investigation, inquiry, trial and other proceedings, be it the victim, accused, police, Court or any other stakeholders involved.



15. The Hon'ble Apex Court in case of *Debendra Nath Padhi (supra)*, while examining the issue of when an accused would be entitled to file an application under Section 91 of Cr.P.C., had discussed the concept of 'necessity' and 'desirability' of production of a document or any other thing. The relevant observations of the Hon'ble Apex Court read as under:

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is “necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code”. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused...”

*iii. Whether the Impugned Order takes into Consideration the Mental Trauma suffered by the Victim?*

16. After the chargesheet was filed by the investigating officer in the present case, the petitioner herein had filed the application under



Section 91 of Cr.P.C., on behalf of the minor victim, seeking preservation of CCTV footage of the place of incident and CDRs of accused persons, of the relevant time period. It is the case of the petitioner that it is necessary and desirable to procure/preserve these documents/records, for just decision of present case.

17. The principal argument of the learned counsel for the petitioner is, that after experiencing the trauma of rape committed upon the victim by her own brother-in-law, by entering her house along with two other persons, while she was only 16 years of age, she had undergone severe mental trauma to the extent that she had to be treated regularly under the care of IHBAS, Delhi.

18. The records of the treatment of the victim have been filed before this Court, and were filed before the learned Trial Court as well alongwith the application filed under Section 91 of Cr.P.C. Therefore, on the basis of medical records pertaining to the treatment of the victim at IHBAS, it was argued that due to extreme mental trauma and stress experienced by the victim, she had inadvertently mentioned the date of incident as 29.05.2023, whereas it had occurred on 02.05.2023 and the I.O. was duly informed about the actual date of incident. It is the case of the petitioner, who is the mother of the victim, that the I.O. did not record her statement in this regard, and rather when they had reached the Police Station one day upon receiving a call from the I.O., they had come to know that the accused, who is the son-in-law of the petitioner and brother-in-law of the victim, had lodged a false complaint against the petitioner and her husband.



19. This Court has gone through Annexure P-2 i.e. the medical records of the victim for the relevant period. The same mentions the medications prescribed to the victim and the counseling sessions held for her. Needless to say at this stage, the Court on its own could also call for the medical records for the relevant period of such treatment extended to the victim, to reach just decision of the case, as per law.

20. Having gone through the medical records of the victim and having perused the contents of the application filed under Section 91 of Cr.P.C. before the learned Trial Court, this Court is of the opinion that the petitioner's grievance that despite information being given to the I.O. regarding the actual date of incident and the reason behind it, as well as informing about the same to the learned Trial Court, that the victim was under extreme mental trauma and stress and had to be treated by the doctors at IHBAS, her application under Section 91 of Cr.P.C. was dismissed mechanically and without appreciating the facts and circumstances of the case, *prima facie* seems to be valid and convincing.

21. This Court is cognizant of the fact that the complainant had mistakenly informed the date of the incident as 29.05.2023, instead of 02.05.2023, which she, through filing the application under Section 91 of Cr.P.C., had later tried to apprise the learned Trial Court about. However, it appears that the learned Trial Court did not go through the medical treatment record of the victim since the Trial Court did not refer to this medical record in the impugned order, which was the very basis of filing of application under Section 91 Cr.P.C. This discrepancy in the date of incident should thus, be



viewed in light of the victim's documented mental distress, as confirmed by records from IHBAS, which have been filed on record by the learned counsel for the petitioner before this Court as well as before the learned Trial Court.

*iv. Sensitivity Must Permeate Every Order At Every Stage Of Judicial Proceeding*

22. While adjudicating cases of sexual assault, the Courts must remain mindful of, and sensitive to, the emotional and psychological state of the victim that such a victim may, at times, struggle to provide precise details of the incident while struggling with the trauma of sexual assault suffered by her, especially in cases such as the present one, where the victim was allegedly sexually assaulted by her own brother-in-law and his two friends.

23. **This Court is also of the firm opinion that sensitivity is not a selective attribute applicable to certain cases or stages of trial;** rather it is an inherent requirement for every judicial proceeding. Sensitivity has to be shown by the Courts at every stage of trial especially in a case of sexual assault of a minor. The Courts cannot lay emphasis on a particular stage of trial such as recording of her evidence when such sensitivity is to be shown towards the victims. The High Courts and the Hon'ble Apex Court have time and again laid down the importance of sensitive dealing of such cases. The Courts cannot lay down specific criteria for exercising sensitivity at specific stages of trial of sexual assault towards the victim.



24. The victim, as in the present case, had experienced a life changing traumatic experience and was under fear of her inappropriate filmed video of gang rape being made public and the trauma of being violated by one known and two unknown persons, to such an extent that she required medical help to recover from the mental trauma suffered by her.

25. In this Court's firm opinion, it is not for the Higher Courts of law to write judgments and direct the Trial Courts about the individual or particular stages of trial where the Courts have to show sensitivity to towards the victim, and the Courts must understand the same themselves as they, too, are bound to their oath of duty.

26. **Needless to say, the Courts are the supportive pillars of hope for justice and assurance for individuals seeking solace in the justice system.** By understanding the mental distress and trauma that a victim of sexual assault may face, the Courts can foster an environment where such victims feel heard and validated, assuring them that their voices will be acknowledged and their grievances will be addressed. In essence, the Court's purpose is not only to interpret the law, but also to serve as a bastion of sensitivity and empathy while adjudicating cases of sexual assault.

## **CONCLUSION**

### ***i. FIR in cases of Sexual Assault: Not Mere Printed Papers, but a Reflection of Trauma Suffered by the Victim***

27. The FIRs in cases involving sexual assault and rape, committed upon minors, are not mere printed papers, but a trauma



writ large, experienced by a living human being, which is difficult to be portrayed on a piece of paper.

28. Even otherwise, it is understandable that a girl, aged about 16 years, being raped by her own brother-in-law, who stealthily had entered into her house, along with two others, and had allegedly committed gang rape upon her, and had recorded the video of the gang rape, had experienced mental and physical trauma to the extent that she needed to be treated by doctors at IHBAS.

29. Needless to say, in cases of sexual assault of minor victims, such as the present one, the extreme stressful situation and life-turning experience faced by a victim should not be dealt with in mechanical manner by the Courts.

*ii. Whether it is 'Desirable' and 'Necessary' to Collect and Preserve the Evidence in Question?*

30. Regrettably, in the present case, the learned Trial Court had declined the request to preserve a critical piece of evidence i.e. the CCTV footage of the actual date of alleged incident, as well as the Call Detail Records of the accused persons, on the sole ground that the victim had mentioned a different date of incident in her initial complaint. In this regard, it is crucial to understand that the victim, who was experiencing mental trauma as reflected from her medical records, may not have been in an optimal state of mind when providing the information and details of the incident in question. In such circumstances, where the victim herself places before the Court of law, the proof of her being in mental trauma driven by the sexual



assault and that being a reason of her being unable to inform the correct date of incident to the police, the Court was duty bound to have exercised sensitivity and empathy. Dismissing the application filed by the petitioner under Section 91 of Cr.P.C., solely on the basis that a different date had been earlier mentioned as date of incident by the minor victim, which was *prima facie* due to her adversely affected mental health as an outcome of the sexual assault, is undoubtedly unjust in the given set of facts and circumstances.

31. Thus, this Court is unable to agree with the finding of the learned Trial Court of rejecting the application for preserving CCTV footage filed by the victim, solely on the basis of discrepancy in the statement of victim and on the ground that I.O. had been informed that the date of incident was 29.05.2023, when the victim herself before the commencement of trial had appeared before the learned Trial Court and apprised it about this discrepancy and the reason thereof. Needless to say, the victim could not have concocted evidence of the past date and in case the CCTV footage would corroborate the statement of the victim, it would rather bring before the Court, the actual truth.

32. Though not all cases of sexual assault will disclose the same facts, as not all victims may suffer trauma to the extent experienced by the victim of this case, but once it was brought to the notice of the Trial Court, it was the duty of the Trial Court to have appreciated it. The learned Trial Court should have at least referred to the medical record of the victim to decide her application for collection of evidence. Once the evidence is destructed by lapse of time or due to





lapse on part of the investigating agency or due to any hyper technical approach by the Courts, it gets lost forever. **The loss of evidence in such cases will result in loss of hope for getting justice**, as the justice may, at times, primarily depend on such evidence. The date of incident is crucial in a criminal case and therefore, as discussed above, **the evidence that the victim pleaded with the Trial Court to be preserved was as crucial as preserving the victim's faith in judicial system.**

33. Therefore, if the author of the FIR herself came forward to inform the Court, and the I.O., that there was some confusion regarding the date and that the incident had taken place on 02.05.2023 and not on 29.05.2023, and the trial had not yet begun, it was the duty of the Trial Court to have taken that into account, considering the peculiar facts and circumstances of the case.

34. Thus, considering the overall facts and circumstances of the case, this Court directs that the CCTV footage of the day of incident i.e. 02.05.2023, surrounding the house of the petitioner, as well as the Call Detail Records of the accused persons between the period January 2023 to May 2023, be collected by the Investigating Officer. The order dated 18.10.2023 of the learned Trial Court is set aside and the petition stands allowed.

35. With these directions, the present petition stands disposed of.

36. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**DECEMBER 12, 2023/at**