

ITEM NO.11

COURT NO.5

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 723/2020
(Arising out of impugned final judgment and order dated 05-12-2019
in SBCRBCA No. 94/2018 passed by the High Court Of Judicature For
Rajasthan At Jaipur)

DILIP GARG

Petitioner(s)

VERSUS

THE STATE OF RAJASTHAN & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.15833/2020-EXEMPTION FROM FILING
O.T.)

Date : 02-03-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Mr. Himanshu Sharma, AOR
Ms. Aditi Sharma, Adv.
Mr. Seeta Ram Sharma, Adv.
Mr. Ram Niwas Sharma, Adv.
Mr. Vinay Kumar, Adv.
Mr. Sandeep Singh, Adv.

For Respondent(s) Ms. Sweta Pareek, Adv.
Mr. Pawan Kumar Roy, Adv.
Mr. Deepak Goel, AOR

UPON hearing the counsel the Court made the following
O R D E R

This special leave petition has been preferred against the
Judgment and order dated 05.12.2019 passed by the High Court of
Rajasthan at Jaipur Bench in S.B.Criminal Bail Cancellation
Application No. 94 of 2018 in and by which the High Court has
cancelled the bail granted to the petitioner on the ground that the
victim-prosecutrix is aged 26 years, but having only mental age of
seven years.

The F.I.R. was registered against the petitioner under Section

376 IPC for the alleged occurrence on 17.05.2018 at 10 p.m. Based on the complaint lodged by Respondent No.2 viz. Sanjay Parwani -brother of prosecutrix, an F.I.R. was registered under Section 376 IPC. After completion of investigation, the charge-sheet has been filed against the petitioner. The Trial Court by order dated 25.05.2018 refused to grant bail to the petitioner and dismissed the bail application.

Being aggrieved by the dismissal of the bail application, the petitioner approached the High Court. The High Court initially granted bail by the order dated 09.07.2018. Subsequently, the complainant-brother of prosecutrix has filed the application for cancellation of bail before the High Court on the ground that the prosecutrix aged 26 years, but having mental age of seven years and her IQ is only 43.75% which puts her in the category of moderate mental retardation. On the ground so raised by respondent no. 2-complainant, the High Court by the impugned order cancelled the bail granted to the petitioner.

Being aggrieved, the petitioner has filed the special leave petition.

When SLP came up for hearing, by the order dated 05.02.2020, this Court has directed the petitioner to surrender on or before 17th February, 2020. Accordingly, the petitioner has surrendered on 17th February, 2020. In this regard, the Additional Sessions Judge, Women Atrocity Cases No. 2, Jaipur Metro, Jaipur has also sent communication to the Supreme Court of India stating therein that the petitioner has surrendered on 17th February, 2020 and has been sent to the judicial custody.

We have heard Mr. Himanshu Sharma, learned counsel appearing on behalf of the petitioner as well as Ms. Shweta Pareek, learned counsel appearing on behalf of respondent no. 2.

Learned counsel appearing for the petitioner has submitted that the charge-sheet has been filed and the petitioner has to give opportunity to putforth his defence in the trial.

Ms. Shweta Pareek, learned counsel appearing on behalf of respondent no. 2 has drawn our attention to Psychological Evaluation Report dated 01.01.2018 issued by the Gautam Hospital and Research Centre and other records submitted that the victim-prosecutrix is aged 26 years having mental age of 7 years and her IQ is 43.75%. Learned counsel further submitted that if the petitioner is granted bail, there is every possibility that he will tamper the evidence and also give threat to prosecutrix.

The occurrence was of the year 2018 and the charge-sheet has been filed and also the petitioner has to face the trial. In order to give opportunity to the petitioner to defend his case, the petitioner is granted bail subject to his executing fresh bail bond for Rs.25,000/- (Rupees twenty five thousand) with two sureties for like sum of Rs.25,000/- (Rupees twenty five thousand) each to the satisfaction of the Trial Court.

In view of the apprehension expressed by the learned counsel appearing on behalf of respondent no. 2, we deem it appropriate to impose condition upon the petitioner to report before the concerned police station once in a week on every Monday until further orders. All contentions raised by learned counsel appearing on behalf of respondent no. 2 is left open to be raised at the appropriate

stage. The learned Trial Court shall consider the matter without being influenced by any of the views/observations expressed by the High Court.

The special leave petition is, accordingly, disposed of.

Pending application(s), if any, shall also stand disposed of.

(MADHU BALA)
AR-CUM-PS

(BEENA JOLLY)
BRANCH OFFICER