

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**

**:SINGLE BENCH:**

**{HON'BLE SHRI JUSTICE ANAND PATHAK}**

**MISCELLANEOUS CRIMINAL CASE NO.3314/2022**

**The Prosecutrix**  
**Vs.**  
**State of M.P. & Ors.**

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Shri Padam Singh, learned counsel for the petitioner.  
Shri B.M. Shrivastava, learned PP for respondent No.1/State.  
Shri Anurag Gohil and Shri R.S. Yadav, learned counsel for  
respondents No.2&3.  
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**ORDER**  
***(Delivered on 7<sup>th</sup> day of April, 2022)***

1. The present petition under Section 482 of Cr.P.C. is preferred by the petitioner/prosecutrix seeking early conclusion of trial and direction to respondent No.1 (S.H.O. Police Station Vidisha Dehat) to accompany the witnesses when they appear before the trial Court for deposition.
2. The sole prayer made by petitioner is early conclusion of case/trial pertaining to physical and sexual exploitation of the minor prosecutrix, registered vide Crime No.851/2019 for alleged offences under Sections 376(2)(n), 376(2)(i), 354(A)(i) (ii), 354(D), 120-B, 201 of IPC and Sections 3,4,5,6,13,14 of the Protection of Children from Sexual Offences Act, 2012

(hereinafter referred to as “the POCSO Act”) and Sections 67,67(A),67(B), 66(D),66(E) of Information Technology Act. The conduct of accused is reflected from the fact that after 13 adjournments, cross-examination of prosecutrix could have been completed. Despite lapse of almost 4 years in such a heinous crime, at present only prosecutrix could have been cross-examined by the accused and still her family members remained to be cross-examined before the trial Court.

3. Respondent No.1/accused is adopting every tactics to delay the trial and to harass the petitioner/prosecutrix and her family members to give up the case and to come to his terms. Since accused was not cooperating in trial and continuously harassing the prosecutrix and her family members, therefore, application for cancellation of bail has been preferred.
4. Fundamental right of every citizen including the complainant and victim is to get justice without any delay; whereas, respondents are causing delay and thwarting the Principle of Speedy Trial and Right to Access Justice.
5. Hon'ble Supreme Court has expressed concern over the long pending trials. Therefore, respecting the spirit of Hon'ble Supreme court, it is imperative that trial be conducted and concluded at the earliest. He relied upon the decision of Hon'ble Supreme court in the matter of **Hussainara Khatoun & Ors. Vs. Home Secretary, State of Bihar, AIR 1979 SC 1369** as

**well as Hussain and Anr. Vs. Union of India, AIR 2017 SC 1362 and Asha Ranjan Vs. State of Bihar, AIR 2017 SC 1079.**

6. On the other hand, learned counsel for respondent No. 1/State admits that Fair Trial and Right to Access Justice is the fundamental right under Article 21 of the Constitution and therefore, appropriate order can be passed.
7. Learned counsel for respondents No.2&3 opposed the prayer with vehemence and submits that trial Court has sufficient means to handle the trial including Section 317 of Cr.P.C. and if the witnesses are not properly examined then it will adversely affect the prospect of respondents and it would be contrary to their fundamental rights. However, learned counsel for the accused fairly submits that accused was cooperating in trial by not seeking any adjournment and would cross-examine the prosecution witnesses at the earliest.
8. Heard learned counsel for the parties at length and perused the documents brought on record by respective parties.
9. The case in hand pertains to heinous offence of rape with a minor girl and making her obscene photographs/videos viral on internet. Tenor and texture of the charges indicate the seriousness of the incident. Here, incident took place in 2019 and till now only prosecutrix and her father have been examined before the trial Court while other material prosecution

witnesses/family members of prosecutrix are left to be examined.

- 10.** From perusal of order-sheets of trial Court, it appears that accused used to cross-examine prosecution witnesses in post lunch session or thereafter so that cross-examination could not be completed on that day and witnesses would have to visit again. On exhausting 13 adjournments, prosecutrix/minor girl could have been examined by the accused. Section 35(1) and (2) of POCSO Act mandates recording of statement of child/prosecutrix within one month of cognizance and conclusion of trial within one year from the date of cognizance of offence.
- 11.** Recently an application for cancellation of bail of accused was also preferred by the prosecutrix under Section 439(2) of Cr.P.C. After considering the rival submissions, this Court vide order dated 31-03-2022 in M.Cr.C.No.6190/2022, cancelled the bail of accused because he was not cooperating in trial. If any accused delays trial deliberately and does not cooperate in following the mandate of law as reflected through Section 35(1) and (2) of POCSO Act and even otherwise, then he renders himself liable for cancellation of bail and/or other stringent measures which can be adopted by the trial Court for ensuring Speedy Trial. Vide order dated 31-03-2022 this Court cancelled the bail of accused to send a message about importance of

Speedy Trial.

12. In the case of **Hussain and another Vs. Union of India (with Aasu Vs. State of Rajasthan)**, AIR 2017 SC 1362, Hon'ble Supreme Court categorically issued certain directions to High Courts for issuance of direction to subordinate Courts in which direction No. (c) categorically contemplates that efforts be made to dispose of all cases which are five years old by the end of the year. The relevant extract is as under:-

*“(i) The High Courts may issue directions to subordinate Courts that-*

*(a) Bail applications be disposed of normally within one week;*

*(b) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;*

*(c) Efforts be made to dispose of all cases which are five years old by the end of the year;*

*(d) As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time;*

*(e) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.*

*(emphasis added)*

(ii) *The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;*

(iii) *The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;*

(iv) *The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;*

(v) *The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Ex. Captain Harish Uppal (AIR 2003 SC 739)(Supra) .*

28. *Accordingly, we request the Chief Justices of all High Courts to forthwith take appropriate steps consistent with the directions of this Court in **Hussain Ara Khatoon (1995) 5 SCC 326 (supra), Akhtari Bi (Smt.) (AIR 2001 SC 1528) (supra), Noor Mohammed (AIR 2013 SC 1217) (supra), Thana Singh (AIR 2014 SC (supp) 856) (supra), S.C. Legal Aid Committee (1994 AIR SCW 5115) (supra), Imtiaz Ahmad (AIR 2012 SC 642)(supra), Ex. Captain Harish Uppal (AIR 2003 SC 739) (supra) and Resolution of Chief Justices' Conference and observations hereinabove and to have appropriate monitoring mechanism in place on the administrative side as well as on the judicial side for speeding up disposal of cases of undertrials pending in subordinate courts and appeals pending in the High Courts.***"

13. In the catena of decisions, right from **Hussainara Khatoon (supra), Anita Kushwaha & Ors. Vs. Pushap Sudan and**

**Ors., AIR 2016 SC 3506** as well as **Asha Ranjan (supra)**, Right to Access Justice and Speedy Trial has been taken into highest esteem by the Hon'ble Supreme Court.

14. Conclusively, from the fact situation of the case and legal position, it is imperative that trial be conducted as expeditiously as possible on day to day basis in view of Section 35(1) and (2) of POCSO Act. Any default or defiance by the accused shall be dealt with sternly by the trial Court as per the different provisions available in Cr.P.C.
15. It is the duty of SHO, Police Station Vidisha Dehat to give protection to the prosecutrix and her family members as and when situation requires so specially when prosecutrix and her family members attend the Court proceedings as prosecution witnesses and they should be given adequate protection so that accused and other persons on his behalf may not intimidate, coerce or threaten the prosecutrix and her family members.
16. Copy of this order be sent to the trial Court as well as S.P. Vidisha and S.H.O. concerned for information and necessary compliance.
17. Petition stands **allowed and disposed of** accordingly.

**(Anand Pathak)**  
Judge