



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 2890/2024

Mohd. Atik Sheikh S/o Sh. Mohd. Khusheed Sheikh, Aged About
41 Years, R/o Lal Magri, Ahmed Hussain Colony, Lane No.3, P.s.
Amba Mata, Udaipur.

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Sanjay Mathur.

For Respondent(s) : Mr. Sumer Singh, PP

HON'BLE MR. JUSTICE ARUN MONGA

Order

10/07/2024

1. Under challenge before this Court is an order dated 02.03.2024, passed by the learned Additional Sessions Judge No.5, Udaipur, in pending Criminal Case No.52/2019, wherein the petitioner is a victim-complainant.

2. It transpires that the allegations in the FIR, inter-alia, are that the accused had assaulted the petitioner and inflicted serious injuries attracting Section 307 IPC, apart from other offences.

3. During the course of the investigation, the blood-stained clothes as well as the weapon used to inflict the injuries on the victim (the petitioner herein) were seized. They are required to be adduced in evidence at the appropriate stage.

4. The trial is currently at the stage of prosecution evidence. In midstream thereof, the prosecution filed an application seeking indulgence of the learned trial court to get an FSL report on the



blood-stained clothes, sword and the other material, which were used to inflict injuries, to be sent to the FSL and obtain a report on the same. However, the learned trial court has dismissed the application *inter-alia* observing that the application of the prosecution has been filed belatedly. The same was thus with the oblique motive of delaying the trial.

5. It was also observed that the prosecution or the petitioner herein ought to have filed such an application before the learned Magistrate at the time of the committal of the trial to the Sessions Court when cognizance was taken.

6. Learned Public Prosecutor does not oppose the instant petition filed by victim / complainant. He states that the learned Sessions court ought to have in fact allowed the application of the prosecution.

7. Having heard learned counsel for the petitioner and learned Public Prosecutor, I am of the view that the order under challenge before this Court is not sustainable. Reasons are not far to seek.

8. The learned Sessions court fell in grave error in observing that the application ought to have been filed before the learned Magistrate at the time of the committal of the trial. The application, being in the nature of adducing evidence, has to be filed at the stage of prosecution evidence before the learned Sessions Court. Therefore, dismissing it on that ground is a complete fallacy committed by the learned Sessions Court.

9. Furthermore, the other reason, which seems to have influenced the court regarding the delay in the trial, is also based on the same premise that since the application was not filed before the learned Magistrate, it is belated and not maintainable.



10. Having already noted herein-above, the application being in the nature of adducing the prosecution evidence has to be before the learned Sessions court. At the same time, it is not disputed that currently prosecution evidence is going on. Therefore, it has been rightly filed at the appropriate stage.

11. Besides above, as regards the seeking of the FSL report, same will rather go a long way to assist the learned trial court in coming to the correct conclusion *qua* the role attributed to the accused in causing injuries. To deny the application without seeking the report would thus result in a miscarriage of justice. Of course, the accused will have the right to question the evidentiary value of the FSL report in accordance with law.

12. As an upshot, the petition is allowed. The impugned order dated 02.03.2024 is set-aside. The application filed by the prosecution is allowed. The clothes and other articles / weapons mentioned in the application are directed to be sent for FSL and the report thereof be furnished before the learned trial court as and when the same is prepared.

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

(ARUN MONGA),J

56-Rmathur/-

Whether fit for reporting : Yes / No