**HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No.4098/2024
CNR: RJHC020550222024 | URN: CRLMP / 8352U / 2024

Chander Bhushan Singh S/o. Late Sh. Markandey Singh, aged 54 yrs. R/o B-34/118-70, Manas Nagar Colony Durga Kund Varanasi (U.P) at present Plot No-4, Flat No.F-2, Vidhan Sabha Nagar, Dhawas, Jaipur (Raj.).

----Accused/Petitioner

Versus

1. State Of Rajasthan through Public Prosecutor.

----Non Petitioner

2. Victim

----Complainant/Non Petitioner

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| For Petitioner(s) | : | Mr. Prahlad Sharma with<br>Mr. Sriniwas Dubey,<br>Mr. Ram Prasad Sharma and<br>Mr. Lakhan Sharma |
| For Respondent(s) | : | Mr. Gaurav Gupta, Asstt.GA<br>Mr. Buglal Meena, Addl. SP (CR) Police Headquarters, Jaipur |

**JUSTICE ANOOP KUMAR DHAND**

**Order**

**12/10/2026**

Reportable

1. The instant miscellaneous petition has been filed by the accused-petitioner seeking quashing of the impugned FIR No. 305/2022, registered at Police Station Chitrakoot, District Jaipur (West), for the offence punishable under Section 376(2)(n) of the Indian Penal Code.

2. This Court, vide order dated 03.09.2024, issued notice to the prosecutrix-respondent No. 2, namely, "SMB". However, the notice has not been served upon her till today. Thus, the prosecutrix-

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respondent No.2 remains unserved, as her present whereabouts in India could not be ascertained.

3. In compliance of the order dated 30.09.2026, the Investigating Officer, Mr. Buglal Meena, Additional Superintendent of Police (Civil Rights), Police Headquarters, Jaipur, has appeared in person along with the case diary and the factual report regarding the investigation conducted so far. He submits that all possible efforts were made to ascertain the whereabouts of the prosecutrix, for which purpose her relatives were contacted. As per the information furnished by her relatives, the prosecutrix is reported to be presently residing in the United States of America (USA) and is no longer residing in India. However, neither her complete address nor any contact number has been furnished to the Investigating Officer. In these circumstances, he is unable to apprise this Court regarding present whereabouts of the prosecutrix.

4. He further submits that, after registration of the impugned FIR against the petitioner, the prosecutrix, accompanied by her husband, appeared before the Station House Officer, Police Station Chitrakoot, Jaipur, on 01.07.2022 and submitted an application stating that she had lodged the instant FIR against the petitioner out of anger and did not wish to pursue any proceedings against him. She accordingly requested the Investigating Officer to close the matter. However, when the then Investigating Officer contacted the prosecutrix on her mobile phone on 24.11.2022, to verify the contents of the aforesaid application, she stated that the application had been submitted under pressure and she wished to

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prosecute the petitioner, alleging that he had raped her. In view of these subsequent developments, the matter was reopened for further investigation, as a negative final report had earlier been proposed on the basis of the application submitted by the prosecutrix. The Investigating Officer further submits that, in the absence of the prosecutrix, the circumstances surrounding the submission of the aforesaid application could not be verified, and the investigation still remains pending.

5. Thus, two conflicting stands emerge from the statements attributed to the prosecutrix-respondent No. 2. On the one hand, she levelled allegations of rape against the petitioner in the FIR lodged on 27.06.2022 and on the other hand, vide application dated 01.07.2022, she requested the Investigating Officer to close the case, stating that she was not interested in pursuing the matter against the petitioner. On the basis of the said application, the then Investigating Officer proposed a negative Final Report. However, before submission of the closure report, a higher Police Officer contacted the prosecutrix on her mobile phone to verify the contents of her application dated 01.07.2022. On being contacted, she stated that the application had been submitted under pressure and that she wished to pursue the case against the petitioner. Consequently, the matter was reopened for further investigation.

6. Under the aforesaid circumstances, the petitioner has approached this Court seeking quashing of the impugned FIR. This Court issued notice to respondent No. 2 on 03.09.2024 at the address mentioned in the FIR and the cause title of the present petition. Despite repeated attempts to serve notice upon her, on

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multiple occasions, over the past two years through conventional modes of service, the notice could not be served and her presence could not be secured. Effective service of notice/summons upon the prosecutrix is essential for the just adjudication of the present petition and for ensuring a fair investigation.

7. The prosecutrix is the star witness in the present case, and the investigation cannot proceed effectively without her participation. It has been informed that she has shifted to the USA.

8. Section 110 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), corresponding to Section 105 of the Code of Criminal Procedure, 1973 (Cr.P.C.), deals with reciprocal arrangements regarding processes empowers a Court to send summons to any person residing outside India in a country in respect of which arrangements have been made by the Central Government with the Government of such country for service or execution of summons or warrants in relation to criminal matters.

9. Further, under Section 112 of the BNSS, where evidence is available outside India, the Court may issue a Letter of Request to the competent authority in the concerned Country for obtaining such evidence, in accordance with the procedure prescribed therein, who in turn shall forward all the evidence so taken or collected to the Court issuing such Letter of Request.

10. India and the USA have entered into a Mutual Legal Assistance Treaty (MLAT) in Criminal Matters, signed in 2001 and brought into force in 2005. Article 1(2) of the said Treaty

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specifically provides for assistance in taking evidence of the person, providing documents and locating persons.

11. The Ministry of Home Affairs (MHA), Government of India, has issued Guidelines bearing No.25016/17/2007-Legal Cell dated 11.02.2009 (revised through guidelines No.F.NO25016/52/2019-LC dated 04.12.2019) concerning the service of summons, notices and other judicial processes upon persons residing abroad. Under the prescribed procedure, the Ministry of Home Affairs, Internal Security Division, acts as the Central Authority for MLAT requests and upon receiving such requests shall forward to the concerned Indian Missions/Embassies, which in turn forward the same to the Central Authority of the concerned Country or to the concerned Indian Mission/Embassy through diplomatic channels as mentioned in the MLAT.

12. As per the above MLAT Guidelines, the USA does not object to service through postal means or informal delivery through diplomatic/consular missions under Article 10(a) of Hague Service Convention.

13. The service through diplomatic channel under Section 105 CrPC / 110 BNSS is valid mode for securing presence of person residing abroad.

14. Considering that the prosecutrix is stated to be residing in the USA and repeated attempts to serve notice upon her at the available address have remained unsuccessful and that her presence is necessary for the further proceedings, this Court deems it appropriate to invoke the mechanism available under Section 110 of the BNSS, read with the India–USA MLAT and the

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relevant guidelines, for ascertaining her whereabouts and facilitating service of notice upon her. Accordingly, the following directions are issued:

**(a)** A request shall be sent to the Ministry of Home Affairs, Internal Security Division, North Block, New Delhi, being the Central Authority for Mutual Legal Assistance Treaty in criminal matters, and to the Ministry of External Affairs, Government of India, for ascertaining the present whereabouts of the prosecutrix, namely, "SMB" wife of Mr. Monil Bavishi, who is stated to be residing in the United States of America.

**(b)** Upon ascertaining her whereabouts, notice/summons requiring her appearance before this Court shall be served upon the prosecutrix, at her identified address in the USA through the Indian Embassy/Consulate in the USA (through Diplomatic channels), as may be permissible under the applicable law and prescribed procedure.

**(c)** The Investigating Officer shall furnish the complete particulars of the prosecutrix available on record, including her passport details, if available, along with two sets of summons, the prescribed request form, the warning and the summary of documents, to the Ministry of Home Affairs within a period of 21 days.

**(d)** The Registry of this Court shall forward a Letter of Request, in duplicate, along with the requisite documents, to the Ministry of Home Affairs, Government of India, for its onward transmission to the competent authority in accordance with the prescribed procedure.

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**(e)** Let a copy of this order be supplied to the Investigating Officer for compliance, with the directions issued herein and for taking necessary steps to facilitate service of notice upon the prosecutrix-respondent No. 2.

15. List the matter before this Court after eight weeks to ascertain the progress made in compliance with the aforesaid directions.

16. Till then, the interim order, if any, shall continue.

(ANOOP KUMAR DHAND),J

7/DA/KuD

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