IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-1548-2014 (O&M)

Date of decision : 06.10.2015

Hardev Singh

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. H.S. Jaswal, Advocate,
for the petitioner.

Mr. Mehardeep Singh, DAG, Punjab,
and Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN, J. (Oral)

This criminal writ petition under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, has been filed seeking issuance of a writ of habeas corpus, directing respondent Nos.4 to 7, to release the alleged detenue from their illegal custody.

At the very outset, the learned State counsel, on instructions, submits that the alleged detenue has been recovered from respondent No.4 and her custody has been restored to her parents. It is further informed that all the other private respondents have also been

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arrested and the investigation is in progress.

The learned counsel for the petitioner has submitted that though the custody of the alleged detenue has been restored back to the petitioner, but the victim, aged 15 years, is at the advanced stage of pregnancy. The family of the petitioner hails from the poorest strata of the society. The petitioner, the father of the victim, is a casual labourer and does not possess adequate resources for the delivery of the child.

The learned State counsel pleads no instructions with regard to the measures and the interim relief, if any, provided to the victim.

The factum that the petitioner comes from the poorest section of the society, does not hold any immovable property and is a casual agricultural labourer, is duly admitted by the learned State counsel. The petitioner is present in the Court, who appears to be sick and infirm person of very fragile health.

In the circumstances, this Court feels that it would be the most appropriate context in which jurisdiction under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure deserved be exercised to advance the cause of justice.

Section 357(A) Cr.P.C. reads as under:-

> ***357A. Victim compensation scheme. -*** *(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have*

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suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

The Hon'ble Supreme Court in Suo Motu Writ Petition (Criminal) No.24 of 2014 in re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014, has observed as under:-

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"26) The crimes, as noted above, are not only in contravention of domestic laws, but are also a direct breach of the obligations under the International law. India has ratified various international conventions and treaties, which oblige the protection of women from any kind of discrimination. However, women of all classes are still suffering from discrimination even in this contemporary society. It will be wrong to blame only on the attitude of the people. Such crimes can certainly be prevented if the state police machinery work in a more organized and dedicated manner. Thus, we implore upon the State machinery to work in harmony with each other to safeguard the rights of women in our country. As per the law enunciated in ***Lalita Kumar*** *vs.* ***Govt. of U.P & Ors*** *2013 (13) SCALE 559, registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and the Police officers are duty bound to register the same.*

27) Likewise, all hospitals, public or private, whether run by the Central Government, the State

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Government, local bodies or any other, are statutorily obligated under Section 357C to provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326-A, 376, 376A, 376B, 376C, 376D or Section 376E of the IPC."

In the instant case, the age of the victim, factum of her delivering the child and the financial status of the victim's family are not in dispute. In the opinion of this Court, even if the family has the requisite financial capacity to bear the expenses, the obligation of the State for payment of compensation and rehabilitation of the victim does not get extinguished. Apart from this, the accused also can be burdened with fine to be paid as compensation to the victim, however, as the investigation is in progress, this Court will refrain from making any further observation in this regard but in the present situation, the Court feels that the exigencies of the situation demand that some immediate help deserves to be extended to the victim. Accordingly, the State of Punjab is directed to pay a sum of Rs.50,000/-, to the victim immediately, as a measure of interim relief. Further, it is ordered that all the hospitalization expenses including medicines, attendant, special diet for the expected mother and after delivery of the child and all other

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expenses of the victim upto one year of the delivery shall be borne by the State.

The Registry is directed to send a copy of this order to the Chief Secretary, Punjab, who shall ensure that the necessary steps are taken in order to provide necessary relief to the victim.

Disposed of.

06.10.2015 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Note : Whether to be referred to the Reporter : Yes

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