

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPCR No. 481 of 2017**

- Vijay Bhatia S/o Shri A. K. Bhatia, Aged About 48 Years Occupation Businessman, R/o 5/6, 5/7, Nehru Nagar (East) Bhilai, District Durg, Chhattisgarh.

**---- Petitioner****Versus**

1. The State of Chhattisgarh Through The Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. The Director General Of Police, Chhattisgarh, Raipur, District Raipur, Chhattisgarh.
3. The Inspector General Of Police, Raipur Range, Raipur, District Raipur, Chhattisgarh.
4. The Superintendent Of Police, Raipur, District Raipur, Chhattisgarh.
5. Police Station, Pandri, Through The Station House Officer, Pandri, District Raipur, Chhattisgarh.

**---- Respondents**


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| For Petitioner        | : | Shri S.C. Verma, Advocate                                         |
| For Respondents-State | : | Shri J. K. Gilda, AG with Shri Anupam Dubey, Dy. GA for the State |

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**Hon'ble Shri Justice Goutam Bhaduri****Order On Board****21/11/2017**

1. Heard on admission.
2. Learned counsel for the petitioner would submit that on 27.10.2017 while the petitioner was on his way to Delhi, at that time he received a phone call that the police wanted to make search of his house on the allegation that he is in possession of certain objectionable compact discs, D.V.D. which were

used in a crime. Therefore, the petitioner came back and his house was searched but nothing was found and the said fact was given in writing. It is contended that despite nothing was found, the name of the petitioner is being inculpated in the case by the police personnel and threat is being extended and publications are made that the petitioner is absconding despite the fact that he is co-operating in the investigation in the said case. It is further contended that the petitioner has no nexus or any inkling with the subject complaint or offence but his name is dragged unnecessary in the case, since he is in contact with one of the leaders of the opposition party. It is stated that his name has been falsely implicated to create undue influence. It is stated that the co-operation of the petitioner with the police would be evident from the letter dated 09.11.2017, which is addressed to the Superintendent of Police, Raipur objecting to the fact that the petitioner was very much present in the town to co-operate in the investigation but he is shown to be absconding. It is submitted that because of the political background of the alleged case, the people at large are against him. It is stated that for the reasons of publication made in news-paper he and his family members are subjected to threat by the public at large and stones and other garbage are being thrown into his house and threat of assault is persisting. It is further submitted that the alleged compact discs of nos. 500 were recovered from one Vinod Verma and further 500 compact discs were recovered from one Ishu Narang, thereby the petitioner's name has falsely been implicated by the prosecution. It is stated that the petitioner has always co-operated in the investigation and is still ready to co-operate, however, due to false accusation and publication it is difficult to continue his business freely. It is stated that thereby it amounts to curtailing the life and liberty and right of the petitioner to live with all dignity is suppressed. He further submits that the petitioner is still ready to be interrogated and is not

fleeing away from any interrogation, but the method in which the image of the petitioner is tarnished by the police authorities, it would show that they are under pressure and are investigating and projecting the case in a different manner not fairly. He would further submit that during the course of hearing of bail of one of the accused the statements were made before the Sessions Court that the petitioner is absconding thereby false accusation is made by prosecuting agencies for which proceedings under Section 340 of Cr.P.C. should be drawn.

3. On the other hand the learned Advocate General makes his preliminary submission opposing the petition. He would submit that reading of the prayer in the petition would show that the injunction to publish the name of the petitioner has been made without making the respective papers or editors as party, therefore, it would not be clear that at whose behest the publication was made. It is further submitted that with regard to the prayer made to investigate the matter by the independent agency, the investigation has already been handed over to the Central Bureau of Investigation, therefore, one of the prayer has already been accepted and until & unless it is shown that the C.B.I. is acting at the behest of some one, it cannot be assumed that the C.B.I. is not properly investigating the matter. He further submits that in order to invoke the powers under Section 340 of the Cr.P.C., appropriate applications has to be preferred before the Court below i.e. the Court of 1st ASJ, wherein the alleged statement of fact of absconding was made, therefore, the petition is not maintainable at this stage.
4. Perused the documents filed along with the petition. The following prayer has been made in this petition:-

10.1 That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise

any other appropriate writ, commanding and directing the respondents to produce all the records related with F.I.R. No.340/2017 for just and proper decision of this case.

10.2 That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing the respondents to give all due protection to the petitioner as provided under Article 21 of the Constitution.

10.3 That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing the respondents to not publish any adverse news in newspaper against the petitioner or informed the news persons that the petitioner is absconding.

10.4 That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing the respondents to handover complete matter for further investigation to any independent agency duly monitored by this Hon'ble Court, looking to the gravity of the offence and stake performed in the matter for just and proper decision and justice in favour of the petitioner.

10.5 That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing any independent agency about the statement made by the Police before the learned Sessions Court on 08/11/2017 and news clipping published and flashed by the respondent-State against the petitioner and also about the complaints made by the petitioner against the State Police.

10.6 That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing to provide adequate and appropriate security of the petitioner and his family members as looking to the high surcharge atmosphere in the issue and also in view of the incident by the members of ruling party the life and liberty of the family members and the petitioner are at great danger.

10.7 Any other relief, which the Hon'ble Court deems fit and proper looking to the facts and circumstances of the case, may also be granted.

5. Certain news-paper clippings of different papers have also been filed. One document is placed on record which shows that the house of the petitioner was searched on the ground that certain C.Ds & D.V.Ds were in his possession, however, after the search, nothing was found. One of the complaint dated 09.11.2017 filed by the petitioner is also on record, wherein it is shown that the petitioner has objected to the fact of showing him absconding which were projected in the news-paper publications. Predominantly as appears, the petitioner appears to have filed this petition on the basis of the news-paper clippings. Admittedly, in this case, the concerned company/firm or individuals, who have published that the petitioner is absconding have not been made a party. Therefore, at this stage, it would be difficult to give a finding at who's behest such publication was made. Any order for enquiry to fix up the liability on some one on the basis of news clipping would be extremely difficult. As has been laid down by the Supreme Court in the matter of ***Laxmi Raj Shetty Vs. State of Tamil Nadu {AIR 1988 S.C. 1274}*** to the effect that judicial notice of facts stated in the news items are in nature of hear-say evidence. A newspaper is not the document referred to in Section 78 (2) of the Evidence Act. The presumption of genuineness of attached under Section 81 of Evidence Act to a newspaper report cannot be treated as proved of the facts reported in such newspaper. The proposition was further followed by the Supreme Court in ***1994 Supp (3) SCC Page 5 – Quamarul Islam Vs. S.K. Kanta***. Therefore, by application of the aforesaid proposition, the prayer made by the petitioner to take action against the respondents cannot be appreciated being completely hear-say facts.
6. With respect to tarnishing the image of petitioner, it would be a matter of evidence. This Court at this stage cannot give a finding of positive fact in

issue in favour of the petitioner. The petitioner would always be at liberty to address his grievance in an appropriate proceeding to establish any fact by proper evidence. So far as the life and liberty is concerned, it cannot be doubted that the State is under obligation to protect its citizen to provide a atmosphere to live a life with dignity and without fear. Therefore, if the petitioner's house is subjected to vandalism and stone throwing and attack by any group, the police authorities are duty bound to protect him without any prejudice and it is expected that in case such allegation comes to fore, the concerned police authorities of the area shall take up the complaint of the petitioner to protect him and provide the legal remedy as available to a citizen. It is expected that the police authorities without any ill will or preconceived notion would redress the grievance of the petitioner if he is subjected to mob attack or is man handled and would not be a mute spectator.

7. So far as the investigation by the independent agency is concerned, the statement has been made by the learned Advocate General at the bar that the investigation has been handed over to the C.B.I., therefore, it appears that the prayer of the petitioner party stands allowed as the investigation is done by C.B.I. is other than the State agencies.
8. With respect to the averments made in the order-sheet of ASJ, Raipur while hearing the bail petition of one of the co-accused, if certain arguments have been advanced during such hearing before the 1st ASJ, it is for the petitioner to move the suitable application before the concerned Court. This Court in exercise of powers under Section 482 of the Cr.P.C. or 226 of the Constitution of India cannot give a finding at this stage and make an enquiry how & why and who's behest such averments were made. The petitioner shall be at liberty to move the suitable application, if so advised, before the

concerned Court.

9. With respect to giving protection to the petitioner, except the news-paper clippings, nothing has been produced before this Court. However, taking into background of this case, it is directed that if the petitioner is subjected to assault or is man handed then the necessary action shall be taken by the concerned police authorities forthwith. Considering the totality of the prayer made, at this stage the petition appears to be premature as the investigation is still going on to find out the truth that too when the reins are in hands of C.B.I. In view of facts, I am not inclined to admit this petition at this stage. Accordingly, the petition is disposed of with the aforesaid observation.

Sd/-

Goutam Bhaduri

Judge

Ashu