

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Misc. No.M- 19969 of 2016(O&M)

Date of Decision: November 20 , 2017.

Maninder Singh

..... PETITIONER (s)

Versus

State of Punjab and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. D.S.Pheruman, Advocate
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

LISA GILL, J.

CRM No.34255 of 2017

Annexures P7 to P12 are taken on record subject to just exceptions.

Misc. application is disposed of.

CRM No.M-19969 of 2016(O&M)

The petitioner, who is an accused in FIR No.122 dated 11.08.2015 under Sections 341/354/354A/354B/354D/295A/506/323/34 IPC and Sections 7/8 of the Protection of Children from Sexual Offences Act, 2012 (the offences punishable under Sections 376/328/120B IPC added subsequently), Police Station Civil Lines, Batala seeks directions to the respondents for constituting a Special Investigation Team (SIT) outside District Batala for conducting

investigation in the abovementioned FIR.

Brief facts are that, the abovesaid FIR was registered on the statement of the complainant, who is an uncle of the victim to the effect that his elder brother's daughter used to go to school on bus or Moped. She was studying in Class 10+1. The complainant's niece called him on his mobile phone on 10.08.2015 and revealed that she was proceeding on her Moped after attending school. She was waylaid outside the school by the petitioner alongwith Kaka Shah and Mehak, who lives in his maternal village Panj Gariyan. There were other boys accompanying the abovesaid accused whom the victim did not know but could recognize them. They started committing indecent acts with her. When she protested, the present petitioner hit her with a sharp edged object and injured her right wrist. The petitioner removed her head gear (Dumala) and threw her on the ground. Thereafter, co-accused Mehak and Kaka Shah took away ₹500/- from her purse which were lying in the box of the Moped. The complainant on receiving this call of the victim, proceeded to the spot on his motorcycle and reached outside Baring School after 10-15 minutes. His niece, who was standing there weeping, told him that a few days ago, the petitioner had forcibly taken her photographs with him on his mobile phone. He had threatened to kill her brother as well. The victim further disclosed to her uncle that the petitioner forced her to make a recording that she had friendly relations with a boy named Pavittar. The petitioner threatened her to bring ₹10,000/- from her home and if she did not give the money, her photographs and recording would be uploaded on the internet. She further revealed that the petitioner alongwith other boys were tailing her since the past number of days

and whenever the petitioner got a chance, he indulged in indecent acts with her. By the time, the complainant reached the spot, the abovesaid boys had left the place. The complainant brought back his niece to the village. The matter was discussed in the family. The petitioner alongwith the other accused, it was alleged, had committed wrong with his niece who is an Amritdhari Sikh due to which she remains under pressure. The abovesaid FIR in this case was registered under Sections 341/354/354A/354B/354D/295A/506/323/34 IPC.

The petitioner, it is submitted, moved an application for anticipatory bail before this Court. His arrest was stayed vide order dated 21.10.2015 in CRM No.M-36340 of 2015 (Annexure P5) and the matter was adjourned to 02.12.2015. Statement of the prosecutrix was recorded on 03.12.2015 after passing of order dated 02.12.2015 (Annexure P6) by this Court in the petitioner's bail application. Learned counsel for the petitioner submits that the victim in her statement recorded on 03.12.2015 has changed the entire version, stating that the present petitioner alongwith others were on visiting terms with her family. Ten days prior to the registration of the FIR in question, the petitioner took her to Metro Hotel, Batala for having tea in order to celebrate her birthday. Some intoxicant was mixed in her cold drink whereupon she lost consciousness. Allegations of violation of her person were raised by the victim qua the petitioner and one Gagandeep @ Kaka Shah. She was intimidated and threatened that if she revealed this incident to anyone else they would eliminate her brother and uncle. After registration of the abovesaid FIR, the victim stated that the accused were threatening her and her family to compromise the matter or they would upload her indecent photographs on the internet. The statement

dated 03.12.2015 of the victim is attached as Annexure P2 with this petition.

Medical examination of the victim was conducted on 04.12.2015. As per the FSL report dated 09.03.2016, spermatozoa was detected in the sample sent for examination. The DNA profiling report (Annexure P10) was inconclusive as no opinion was furnished therein.

An inquiry into the matter was conducted on a representation moved by the present petitioner. The inquiry was conducted by the Superintendent of Police (Investigation), Batala. As per report dated 19.02.2016 (relevant extract of which is attached as Annexure P3 with this petition), it is opined that the victim had gone to Metro Hotel, Batala alongwith the petitioner out of her own free will. Moreover, delay of four months in the registration of the case makes it doubtful. It is however observed that as the prosecutrix has recorded her statement under Section 164 Cr.P.C. before the learned Judicial Magistrate First Class, Batala on 03.12.2015, it would be better that the court should decide whether the accused are innocent or otherwise. It was thus recommended that the final report under Section 173 Cr.P.C. be presented, which was ultimately presented on 20.02.2017.

Learned counsel for the petitioner vehemently argues that the Investigating Agency has not discharged the burden cast upon it. Fair and impartial investigation has not been carried out. Final report under Section 173 Cr.P.C. has been presented by the Investigating Agency by completely abdicating the duty cast upon it. Once it was found by the Investigating Agency that the victim had gone to the hotel out of her own free will and the case against the petitioner was found to be doubtful, there was no question of proceedings

against him. It is vehemently argued that the victim at the outset never revealed any allegation attracting the rigours of the offences punishable under Section 376 IPC and Section 7/8 of the Protection of Children from Sexual Offences Act, 2012. It is only after passing of order dated 02.12.2015 in the petitioner's bail matter pending before this Court that statement of the victim was recorded on 03.12.2015, wherein for the first time she raised the allegations as mentioned above. Moreover, the Chemical Examiner's report clearly indicates the false implication of the petitioner. The incident in question even if it is accepted, occurred months ago. Therefore, presence of spermatozoa pursuant to medical examination conducted months thereafter cannot in any manner inculcate the present petitioner. While referring to the report (Annexure P3) of the Superintendent of Police (Investigation), it is submitted that the Investigating Agency without discharging the burden cast upon it, has merely submitted the Challan for the sake of it. A specific finding should have been returned regarding the complicity of the petitioner in this case. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in **Dharam Pal v. State of Haryana and others, 2016 (4) SCC 160**, wherein it is held that the constitutional courts can direct for further investigation or investigation by some other Investigating Agency to ensure fair investigation and fair trial. Commencement of trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power. Reliance is also placed on a judgment of the Hon'ble Supreme Court in **Narmada Bai v. State of Gujarat and others, 2011 (5) SCC 79**. It is thus urged that presentation of the final report under Section 173 Cr.P.C. by itself cannot be an

impediment in handing over the investigation to some other agency.

Learned counsel for the State opposed this petition stating that once the prosecutrix raised specific allegations, the Challan in this case has been rightly presented against the accused. To decide the innocence or otherwise of the accused is in the domain of the trial court and cannot be usurped by the Investigating agency. Proper and fair investigation was conducted in the matter and all the facts are placed before the learned trial court to decide the matter in accordance with law. Learned counsel for the State relies upon the judgments of the Hon'ble Supreme Court in **Virender Prasad Singh v. Rajesh Bhardwaj and others, 2010 (9) SCC 171** and **K.V.Rajendran v. Superintendent of Police, CBCID South Zone, Cennai and others, 2013 (12) SCC 480** to submit that once the investigation is complete and the final report has been presented, the court should ordinarily not reopen the investigation.

I have heard learned counsel for the parties at length and have gone through the file with their able assistance.

It is not in dispute that the final report in this case has since been presented. The matter is before the learned trial court. Charge in this case is yet to be framed. Learned counsel for the petitioner is unable to make out an exceptional case which calls for interference by this Court in exercise of power under Section 482 Cr.PC.

While not considering it appropriate to make detailed comments on the facts of the case or express an opinion on the merits thereof, this petition is disposed of with liberty to the petitioner to take all the pleas available to him before the learned trial court at the appropriate stage. Needless to say, the

learned trial court shall consider the same in accordance with law.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

November 20 , 2017.
'om'

(**LISA GILL**)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No