

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.12812 of 2018 (O&M)

Date of Decision:31.07.2018

Dalbir Saroha

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.R.S. Chahal, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J.

The petitioner has prayed for the issuance of a writ in the nature of mandamus for seeking a direction for holding a fair and impartial enquiry into the alleged unnatural death of Rakesh alias Boda in the police encounter, who had stated to have received a gunshot injury in the police encounter or to handover the enquiry/investigation to the CBI or a Special Investigation Team.

At the outset, it may be noticed that FIR No.136 dated 2.5.2012 under Sections 186/353/307/34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 was registered at Police Station Kundli, Sonipat by Rajpal, SHO, Kundli against the deceased Rakesh alias Boda and his accomplice, who had allegedly opened fire upon the police party when they were intercepted and a big cache of arms was recovered from them. An enquiry under Section 176 of the Cr.P.C., in the said FIR, was conducted by Rakesh Gupta, Enquiry Officer-cum-JMIC, Rohtak in which he had categorically observed that none of the witnesses has stated that the attack

that the same was forced one which was done at the spur of the moment. It was also observed that *“there is nothing on record to suggest that the act of the police was pre-planned or there was any negligence or lapse on the part of police in providing medical aid to the injured”*. The said report prepared by the JMIC, Rohtak was sent to the District & Sessions Judge, Rohtak. It is worth while to mention that during the enquiry, the learned JMIC had recorded the statement of the relatives of Rakesh alias Boda. None of the relatives of the deceased has made any kind of complaint or has allegedly approached this Court rather the present petition has been filed by a stranger for seeking the aforesaid direction.

In order to justify the *locus standi* of the petitioner, learned counsel for the petitioner has referred to a decision of the Supreme Court rendered in the case of *“A.R. Antulay Vs. Ramdas Srinivas Nayak” 1984 (2) SCC 500*.

Insofar as the decision of the Supreme Court in the case of *A.R. Antulay (Supra)* is concerned, in the said case, a Criminal Revision filed by the appellant therein before the Bombay High Court bearing CRA No.510 of 1982 was decided against him when the appellant in that case raised an objection about a private complaint filed by the respondent therein on which the Sub Judge had taken cognizance. The grievance was that as per Section 5A of the Prevention of Corruption Act, 1947, the cognizance can be taken only upon a police report and not upon a private complaint. In this background, the decision was rendered by the Supreme Court whereas in the present case, there is no denial to the fact that the deceased Rakesh alias Boda has the family members, who have not raised any dispute about the manner of investigation and no FIR has been registered against any police

was registered by the police basically under Sections 186/353/307/34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 because they were attacked with the fire arms by the deceased and his accomplice when they were trying to nab Rakesh alias Boda for possessing arms unauthorisedly and there was a suspicion that they were on a hunt for a kidnapping for ransom.

Thus in view of the aforesaid, leaving it open for the family members of the deceased Rakesh alias Boda to take their legal remedies, the present petition is hereby dismissed on the ground of the *locus standi* of the petitioner, who has been allegedly filing these types of petitions, mentioned in para 4 of his additional affidavit appended with CM No.9856 of 2018, for the reasons best known to him.

31.07.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No