

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

CWP No. 19904 of 2018

Date of Decision: 10.08.2018

VISHAL JANGOTRA AND ANOTHER

....Petitioners

VS.

UNION OF INDIA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. J.S. Bedi, Senior Advocate, with
 Mr. Sonpreet S. Brar, Advocate,
 for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners have made a prayer for the issuance of a writ in the nature of *Mandamus* to direct respondent No. 1 to transfer the investigation to respondent No. 4-Central Bureau of Investigation (CBI) in a case registered vide FIR No. 10 dated 12.01.2018 (Annexure P-1) under Sections 363 of the RPC (later on added Sections 343, 376D, 302, 201 and 120-B of RPC) and consequential reports under Section 173(2) Cr. P.C.

The brief facts of the case are that an FIR No. 10 dated 12.01.2018 was registered initially under Section 363 RPC at Police Station Hiranagar, Kathua at the instance of Mohd. Yousaf S/o Shab Din resident of Rasana, Hiranagar, Kathua, Jammu & Kashmir with the following allegations: -

“To the SHO, Police Station Hiranagar, Sir, Self Mohd. Yousaf S/o Shab Din Caste Bakanwal R/o Rassana (Palakh Khawal) Tehsil Hiranagar. On 10.01.2018 my daughter namely Asifa age 8 years had gone for grazing horses in the nearby forest at about 1400 hrs, she was seen with horses. At about 1600 hrs, horses returned back in the Dhera but Asifa has not returned. On this self along with others started search in the forest and yesterday again search all the forest areas but Asifa could not be traced out. I have a doubt that

somebody has kidnapped my daughter. Description roll is as age 8 years, height 3'6" wearing salwar and kamiz red blue colour, plastic shoes, and blue sweater. It is required that matter may be registered and proceeding be initiated."

According to the petitioners, three Special Investigation Teams (SITs) were constituted for the purpose of investigation in the aforesaid FIR. On 09.04.2018, third SIT submitted its report under Section 173(2) Cr.P.C. in the Court of Chief Judicial Magistrate, Kathua against Deepak Khajuria S/o Updesh Khajuria, Surinder Kumar S/o Sain Das, Parvesh Kumar S/o Ashok Kumar, Vishal Jangotra@Shamma S/o Sanji Ram, Sanjhi Ram S/o Des Raj, Tilak Raj S/o Amir Chand and Anand Dutta S/o Shanti Swaroop Dutta,

Mohd. Akhtar S/o Qasim, who claimed himself to be the biological father of the deceased, approached the Hon'ble Supreme Court by way of a writ petition bearing WP (Criminal) No. 85 of 2018. In the said petition, Hon'ble the Supreme Court passed an order on 07.05.2018 in which following directions were issued: -

"In view of the aforesaid, we think it appropriate to issue the following directions:-

- (i) The matter that has been committed to the court of the District & Sessions Judge, Kathua, shall stand transferred to the file of the District & Sessions Judge, Pathankot situate in the State of Punjab;*
- (ii) The District & Sessions Judge, Kathua shall send all the materials relating to the charge-sheet and other documents in sealed covers through special messengers with the assistance of the police force to the transferee court;*
- (iii) The transferee court shall proceed under the Ranbir Penal Code as that applies to the State of Jammu & Kashmir;*
- (iv) The statements of the witnesses that have been recorded in Urdu language, as accepted by Mr. Gopal Subramaniam, shall be translated to English so that the transferee court does not face any difficulty in conducting the trial;*

- (v) *The State of Jammu & Kashmir shall provide requisite number of interpreters as directed by the learned District & Sessions Judge, Pathankot so that the deposition of the witnesses can be properly recorded and translated copies thereof can be provided to the accused persons;*
- (vi) *It shall be the duty of the State of Jammu & Kashmir to transport the witnesses to Pathankot and provide all other necessary facilities, including food, etc. so that the witnesses do not face any difficulty;*
- (vii) *The accused persons shall also be similarly treated so that they do not feel that solely because they are accused persons, they are presumed to be guilty, for it is the settled principle that they are innocent till they are found guilty;*
- (viii) *The learned District & Sessions Judge, Pathankot shall himself take up the trial and not assign it to any Additional Sessions Judge;*
- (ix) *The learned District & Sessions Judge, Pathankot shall fast-track the trial and take it up on day-to-day basis so that there is no delay in trial;*
- (x) *The examination-in-chief and the cross-examination of witnesses shall be in a continuous manner and for no reasons whatsoever the same shall be deferred;*
- (xi) *The State of Jammu & Kashmir is granted liberty to appoint the Public Prosecutor for prosecution of the case;* (xii) *The trial shall be held in camera so that the witnesses feel protected and the accused persons feel safe;*
- (xiii) *As this Court is monitoring the matter, no court shall entertain any petition pertaining to this case; and*
- (xiv) *The juvenile, who is facing the trial, shall be dealt with in accordance with law and he should be given all special care and protection as per the command of the law.*

In view of the aforesaid directions, the order staying the trial before the Kathua court stands vacated. The protection that we had granted vide order dated 16th April, 2018, shall continue and shall not be varied till the trial is over.

Let the matter be listed on 9th July, 2018.”

Thereafter, on the adjourned date i.e on 09.07.2018, the following order was passed by the Hon'ble Supreme Court vide which the writ petition was ultimately disposed of:-

“In view of the obtaining situation, we issue the following directions:-

- (i) The supplementary charge-sheet, as indicated by Mr. Naphade, after obtaining instructions, shall be filed within eight weeks;*
- (ii) The learned trial Judge shall ensure that the proceedings are held in-camera converting the courtroom to be so and barring the persons mentioned hereinabove, no one shall be allowed entry;*
- (iii) The accused persons who are presently lodged in Kathua jail shall be shifted to District Jail, Gurdaspur, Punjab. The relatives of the accused will have the right to visit them at Gurdaspur jail within the visiting hours.*
- (iv) If any of the relatives of the accused would like to meet the accused persons at Gurdaspur and such a request is made the State of Jammu and Kashmir shall pay the expenses for his/her travel according to prescribed norms. Be it clarified, we have passed this direction, regard being had to the exceptional circumstances of this case.*
- (v) The State of Punjab shall provide security to the learned trial Judge and shall also secure the court premises where the trial is being held. We have directed the Punjab Government to do so as the court is situated in the State of Punjab;*
- (vi) As far as the Special Public Prosecutor is concerned, he shall be provided security, as and when asked for, by the State of Jammu & Kashmir; and*
- (vii) If any accused or the family of the victim is aggrieved by any order passed by the trial court, they are entitled to approach the High Court of Punjab & Haryana as that would be the High Court for the purpose of dealing with the matters arising out of the said trial. Direction*

no. (xiii) issued vide order dated 07.05.2018 stands modified accordingly.

With the aforesaid directions, the writ petitions stand disposed of.

Pending applications, if any, are deemed to have been disposed of.”

Learned counsel for the petitioners has informed this Court that the supplementary charge-sheet has also been filed on 30.07.2018.

The petitioners have now approached this Court, raising grievance against the investigation having been carried out and made the only prayer which has been mentioned in the beginning of this order i.e. for transfer the investigation to the CBI.

Although, learned senior counsel for the petitioners has vehemently argued that this Court has the jurisdiction to entertain the present writ petition but I am of the considered opinion that in the order dated 07.05.2018, Hon’ble the Supreme Court has specifically observed that ***“As this Court is monitoring the matter, no Court shall entertain any petition pertaining to this case.”*** But the learned counsel for the petitioner has submitted that the aforesaid order has been diluted by the Hon’ble Supreme Court by passing the following order on 09.07.2018 which reads as under:-

“If any accused or the family of the victim is aggrieved by any order passed by the trial court, they are entitled to approach the High Court of Punjab and Haryana as that of Punjab and Haryana would be the High Court for the purpose of dealing with the matters arising out of the said trial. Direction no. (xiii) issued vide order dated 07.05.2018 stands modified accordingly.”

I have heard learned counsel for the petitioners and perused the record with his able assistance.

We are at the stage to decide as to whether this Court should entertain the writ petition for the purpose of considering the prayer made by the petitioners for transfer of investigation to the CBI. In the order dated 07.05.2018, Hon'ble the Supreme Court has specifically directed that since this Court is monitoring the matter, therefore, no other Court should entertain any petition pertaining to this Case.

On 09.07.2018 the Supreme Court has noticed the arguments of the learned counsel appearing on behalf of the victim family which may also be noted down for the purpose of ready reference which read as under:-

“Ms. Indira Jaising, learned senior counsel appearing for the victims contended that though the trial is held on a day to day basis, the Court is not getting enough time since a lot of time is spent in commuting and further getting the presence of the advocates. She would contend that the accused persons who have been lodged in Kathua jail should be transferred to District Jail, Gurdaspur, Punjab. That apart, she would urge, because of direction no.(xiii) contained in the order dated 07.05.2018, the High Court is not entertaining any petition which either the family of the victim or the accused are entitled to challenge in law.”

In view of the aforesaid arguments raised by the learned counsel appearing on behalf of the victim, direction No. (vii) contained in the order dated 09.07.2018 was issued by the Hon'ble Supreme Court in which it was categorically ordered that if any accused or member of the family of the victim is aggrieved by any order passed by the trial Court, they were entitled to approach the High Court of Punjab and Haryana for the purpose of its redressal. It was also said that direction (xiii) contained in the order dated 07.05.2018 stands modified accordingly.

Since, there is no order passed by the trial Court which is required to be looked into by this Court for the purpose of judging its validity

therefore, the prayer made by the petitioners for seeking a writ in the nature of mandamus for shifting the investigation to the CBI, cannot be entertained by this Court. The petitioners may, if so advised, avail their remedy by approaching Hon’ble the Supreme Court for this purpose in view of the orders passed on 07.05.2018.

With these observations, present petition is disposed of.

August 10, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking / reasoned :	Yes	/	No
Whether Reportable :	Yes	/	No