

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

Crl. Misc.No.M-19543 of 2020

Date of Decision:- 23.09.2020

Kulwinder Kaur

....Petitioner

vs.

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Preetinder Singh Ahluwalia, Advocate,
for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

Sudhir Mittal, J.

The mother of a girl child-X got her statement recorded on 17.06.2020 resulting in registration of FIR No. 69 dated 17.06.2020 at Police Station, Mukerian, under Section 376-D, 120-B and 506 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012. According to her statement child-X had gone to school on 22.02.2020 and had boarded the bus at around 6:30 A.M. She returned home at around 4:00 P.M. The mother noticed that her face was dull and that there were blood stains on her skirt. She thought that it was due to menstruation. However, she kept on bleeding for several days. After many days, the mother noticed that there were bite marks on the chest of her daughter. She questioned her repeatedly. Her daughter used to become nervous when she was questioned about her injuries but never revealed anything. Ultimately, on 14.06.2020

she revealed that on 22.02.2020, she had reached school and was sitting in class with her friend child-H. There was no one else in class and the time was around 7-7:15 A.M. Classes commence at 8:30 A.M. Child-X consumed some water from the water bottle of child-H and lost consciousness. When she regained consciousness, she realised that two buttons of her shirt were open and three boys were standing in front. Two of these boys were of Class 10+2. One of them has been named as Abhi while the name of the second boy was not known. The third boy is named Manav of class VI. Together the three of them outraged the modesty of her daughter and threatened her not to disclose the same to anyone.

After registration of the FIR, Inspector Pushpa Devi was appointed as the Investigating Officer.

The present petition has been filed for directions that the investigation be handed over to a Special Investigating Team headed by a senior lady IPS Officer. The grounds mentioned in the petition for seeking relief are that constant pressure is being exerted upon the victim's family to settle the matter allegedly, on account of the influence of the school management. This is because the school management failed to report the incident to the police even though it was aware of it and consequently the school management has been rendered criminally liable.

After registration of the FIR, a complaint was made by the grandfather of the victim to the Senior Superintendent of Police wherein an additional fact was mentioned that after the alleged incident the victim apprised her school master about it who called one of the boys and asked him to apologize. He also made the victim slap that boy. Apart from this fact, it has been stated that the police had wrongly mentioned the date of the

incident as 22.02.2020. Actually, the victim had only disclosed that the incident took place inside the school premises in February 2020 and that she did not remember the exact date. On the basis of the last mentioned allegation, it was alleged that the police is conniving with the accused and that action be taken in accordance with law so that the course of justice is not subverted.

Upon issuance of notice, a status report by way of affidavit of Ravinder Singh, PPS, Deputy Superintendent of Police, Sub-Division Mukerian, District Hoshiarpur has been filed. Details of the investigation carried out till date have been mentioned. Finally, it has been stated that there is no objection in case the investigation is transferred to some other agency or to a Special Investigating Team.

Learned counsel for the petitioner has argued that a perusal of the status report shows that the investigation is being done in a shoddy manner. It has been found that the victim is 11 years of age and yet, Section 376-AB IPC has not been invoked. The manner in which the investigation has been conducted also shows that the Investigating Officer is not aware of the definition of rape as enshrined in Section 375 IPC. According to the said definition, insertion of a finger or any other object inside the vagina constitutes rape but the police is sending the vaginal swabs of the victim for examination by the Forensic Science Laboratory more than four months after the incident took place to establish whether rape was committed or not. The result of the examination by the Forensic Science Laboratory was a foregone conclusion yet, medical opinion has been obtained on the basis thereof to establish whether sexual intercourse was committed or not. In this regard, reference has been made to the report of the Forensic Science

Laboratory annexed as Annexure R-1 with the affidavit. It has been further argued that the investigation conducted till date reveals that the management of the school is exerting pressure upon the police to scuttle the matter so that its criminal liability is avoided.

Learned State counsel supports the investigation carried out till date and submits that the police is not under anybody's influence nor is it pressurizing the victim's family to settle the matter. Investigation is being done properly and thoroughly. Statements of a large number of persons have been recorded and the victim has been subjected to medical examination. Her statement under Section 164 Cr.P.C. has also been recorded. The police has left no stone unturned to carry out a complete and unbiased investigation so that truth may be revealed.

A careful perusal of the status report shows that the police has recorded statements of the driver of the bus in which the victim used to go to School. The statement of the bus driver in whose bus child-H used to travel has also been recorded. Statement of the transport in-charge of the School has also been recorded apart from that of the security guard who records the entry and exit of each school bus. The statement of the class teacher as well as the statement of the master to whom the victim allegedly informed about the incident have also been recorded. Attendance record for the month of February 2020 has been obtained. Statements of the Principal of the School, the sweepress on the 4th floor and admission record of students of Class 10+2 of the School along with their attendance register have also been obtained. The timings of entry and exit of school buses from 18.02.2020 till 26.02.2020 have been obtained and tabulated. Having gone through the record of the investigation, I am satisfied that the same is proceeding in an

unbiased manner. There is also no indication that the police actions are being dictated by the school management or that any other kind of pressure is being exerted upon it. I am specifically refraining from making any observations on the respective arguments raised by the learned counsel as the same may, even inadvertently, affect the result of the ongoing investigation.

I, however, deem it appropriate to direct the Investigating Officer to get a physical examination of the victim done to establish whether any penetrative sexual assault has in fact taken place. This shall however be subject to the consent of the victim and her mother. The Investigating Officer shall also take into account any material that may be provided by the victim's family.

With the aforementioned observations, the petition stands disposed of.

September 23, 2020
poonam

(SUDHIR MITTAL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**