

CRM-M-26813-2020 (O&M)

Through Video Conference

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

**CRM-M-26813-2020 (O&M).
Decided on: November 04, 2020.**

Surinder Kumar

.. Petitioner

VERSUS

State of Punjab and others

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Vishal Sharma, Advocate,
for the petitioner.**

Mr.M.S.Dullat, Addl. A.G. Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 482 of the Code of Criminal Procedure, for issuing directions to the State of Punjab, to transfer the criminal proceedings pertaining to FIR No.230 dated 12.08.2020, under Sections 304-B, 498-A, 406 and 120-B IPC, registered at Police Station, Dinanagar, District Gurdaspur, to crime branch or any other District preferably Pathankot. A further prayer has been made to look into

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the representation dated 21.8.2020 (Annexure P2) and to recover the grand-daughter of the petitioner from the custody of the accused persons and be handed over to the petitioner.

Learned counsel for the petitioner has submitted that the daughter of the petitioner was married in April 2017 with Ricky son of Tarsem Lal, and thereafter, the in-laws started torturing and beating her and ultimately on 12.8.2020, her daughter had died by taking some poisonous medicine. He filed a complaint before the police and FIR No.230 dated 12.8.2020, was registered against accused which included the husband of the daughter of the petitioner, mother-in-law, father-in-law, brother-in-law and sister-in-law. Thereafter, the husband of the daughter of the petitioner was arrested whereas other co-accused were not arrested by the police. The petitioner had thereafter represented to the SSP, Gurdaspur, number of times but the investigation was not fairly conducted. Learned counsel for the petitioner further submitted that grand-daughter (daughter's daughter) of the petitioner aged 2½ years has been kidnapped by the accused persons and therefore, she should be handed over to the petitioner. He made representation vide Annexure P2 dated 21.8.2020.

After notice was issued in the present case calling for the status report, the State filed status report by way of affidavit of Mr. Mahesh Kumar, PPS, DSP, Dinanagar, in which it has been stated that after registration of the FIR dated 12.8.2020, the accused Ricky (husband of petitioner's daughter) was arrested on 13.8.2020. So far as Priya and Lucky (brother-in-law and sister-in-law) are concerned, they had filed anticipatory

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bail application before the Addl. Sessions Judge, Gurdaspur, and the same was dismissed on 26.8.2020 and the anticipatory bail application filed by Tarsem Lal and Sukhwinder Kaur (father-in-law and mother-in-law), has also been dismissed by the Court of Addl. Sessions Judge, Gurdaspur, on 1.9.2020. Thereafter, the investigating officer filed an application dated 28.8.2020 in the learned trial Court regarding obtaining the arrest warrant against aforesaid four persons following which non-bailable warrants were issued by the Court of JMIC, Gurdaspur on 23.9.2020. However, in the meantime, the brother-in-law and sister-in-law namely Lucky and Priya filed CRM-M-27116 of 2020 for anticipatory bail before this Court and interim protection was granted to them. Thereafter, the aforesaid Lucky and Priya joined investigation on 21.9.2020. So far as mother-in-law and father-in-law are concerned, many raids have been conducted by the police in the house/relative of the remaining accused and the local police is making all efforts to arrest the remaining accused. It has been further stated in the status report that so far as the representation submitted by the petitioner vide Annexure P2 with regard to conspiracy and kidnapping of the grand-daughter of the petitioner is concerned, in the aforesaid representation, the petitioner had got recorded his statement on 14.9.2020 that he does not require any action of the said complaint because his grand-daughter (wrongly typed as daughter-in-law) was well and therefore, the complaint was filed. It has been further stated in the affidavit that the petitioner had filed a complaint before the Child Welfare Committee, Gurdaspur, and the District Legal Services Authority, Gurdaspur, regarding care and protection

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of baby Jacqueline (grand-daughter). The Legal Services Authority, issued a letter dated 15.9.2020, to the SSP, Gurdaspur, to produce baby Jacqueline in the committee. The baby Jacqueline was produced before the Committee on 29.9.2020 by the uncle and Aunty and the case is pending in the Child Welfare Committee. It is further stated that investigation of the case is being carried out impartially and fairly. Para 10 of the affidavit which has been filed by the DSP, Dinanagar, is reproduced as under:-

“10. That it is pertinent to mention here that the petitioner had filed a complaint to the Child Welfare Committee, Gurdaspur, as well as District Legal Service Authority, Gurdaspur regarding care and protection of baby Jacqueline. The Legal Service Authority issued a letter dated 15.09.2020 to SSP, Gurdaspur to produce the baby Jacqueline in the committee. The baby Jacqueline was produced in the Committee on 29.09.2020 by the uncle and Aunty (Chacha & Bhua). The case is pending in the Child Welfare Committee.”

The petitioner has filed counter affidavit through E-mail which is directed to be taken on record.

In the counter affidavit, the petitioner has denied making any statement to the police with regard to the filing of the complaint. It is further stated in the affidavit that the police is not making any effort to arrest the accused persons and that the police was putting pressure on him to

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withdraw the case and compromise the matter out of political influence. Further, in para 8 of the said affidavit, the petitioner has admitted that he had filed a complaint before the Child Welfare Committee Gurdasapur as well as before the District Legal Services Authority, Gurdasapur, regarding care and protection of the baby girl and that the baby girl was produced in the Committee on 29.9.2020 by the uncle and aunty and the case was pending before the Child Welfare Committee. It is further stated that the said uncle and aunty are the accused persons who have been granted bail by this Court and therefore, they are not entitled to custody of the minor.

On the other hand, learned State counsel has submitted that the present petition is liable to be dismissed on the ground that the police has taken all the measures in the investigation of the case. The husband of the daughter of the petitioner was immediately arrested and on the application of the State before the learned Court, arrest warrants were issued and thereafter, the brother-in-law and sister-in-law had filed anticipatory bail petition in this Court and were granted interim protection and had joined investigation process and so far as father in law and mother in law are concerned, as per the affidavit filed by the State all efforts are being made to arrest them and therefore, the criminal proceedings may not be transferred on conjectures and surmises. He further submitted that the representation of the petitioner has already been addressed to by the investigating authorities and it was on his statement that the complaint was filed. Now the petitioner cannot be permitted to take U-turn and say that he never gave the statement in this regard. He further submitted that the

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petitioner cannot be permitted to take such kind of factual disputes before this Court. He further submitted that even otherwise also, the petitioner himself has admitted in his counter affidavit that the welfare of the child is being looked monitored by the Legal Services Authority and the case is pending before the Child Welfare Committee and therefore, no cause of action arises to the petitioner for seeking custody of the child by filing the present petition and as such, prayed for dismissal of the present petition.

I have heard the learned counsel for the petitioner as well as the learned State counsel through video conference.

So far as the prayer of the petitioner with regard to transfer of criminal proceedings is concerned, a perusal of the affidavit which has been filed by the State would show that after registration of the FIR, husband of the petitioner was immediately arrested and so far as remaining accused are concerned, since they are absconding, the investigating officer filed an application before the JMIC, for seeking arrest of the remaining accused and non-bailable warrants were issued by the JMIC, Gurdaspur on 23.9.2020, however, before that this Court in CRM-M-27116 of 2020, had granted protection to the brother-in-law and sister-in-law on 10.9.2020 and as per the affidavit filed by the State, efforts were being made to arrest the remaining accused i.e. father in law and mother in law and therefore, the apprehension of the petitioner that the investigation is not being carried out in proper and fair manner seems to be misconceived.

So far as apprehension of the petitioner with regard to safety and welfare of the grand-daughter of the petitioner is concerned, it is

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an admitted position that her safety and welfare is being monitored by the District Legal Services Authority, Gurdaspur and the case is pending before the Child Welfare Committee. The plea of the petitioner that the petitioner being grand-father of the girl is entitled to seek custody would not be permissible under the provisions of Section 482 Cr.P.C.

Therefore, in view of above, there is no merit in the present petition and the same is hereby dismissed.

November 04, 2020.	JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No