

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPCR No. 836 of 2021**

- Jagmohan Yadu, S/o Gulal Yadu, Aged About 50 Years, R/o Khorpa, Police Station Patan, District Durg, Chhattisgarh.

**---- Petitioner****Versus**

1. State of Chhattisgarh Through Station House Officer, Police Station Patan, District Durg, Chhattisgarh.
2. Bhagawat Yadav, S/o Ramanuj Yadav, Aged About 31 Years, Village Khorpa, Police Station Patan, District Durg, Chhattisgarh.
3. Rupesh Yadav, S/o Ramanuj Yadav, Aged About 28 Years, R/o Village Khorpa, Police Station Patan, District Durg, Chhattisgarh.

**---- Respondents**


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| For Petitioner | : | Mr. Shantam Awasthi, Adv. |
| For State      | : | Mr. Ghanshyam Patel, G.A. |

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**Hon'ble Smt. Justice Rajani Dubey****Order on Board****15/12/2021**

1. The facts projected by the petitioner are that respondents No. 2 & 3 were convicted for the murder of his brother by the learned Second Additional Sessions Judge, Durg, C.G. vide order dated 02.03.2019. The private respondents have challenged the same before this Court through CRA No. 664/2019. The High Court has enlarged the respondents No. 2 & 3 on bail/suspension of sentence. Now, the private respondents have threatened the petitioner and his family members of dire consequences. Petitioner has filed this petition seeking direction to respondent No. 1 to take appropriate steps for cancellation of the bail/suspension of sentence to

respondents No. 2 & 3 and to ensure safety and security of the petitioner and his family members. Hence, this petition.

2. On the basis of this factual matrix, the petitioner has filed this petition and prayed for following reliefs:-

**a.** The Hon'ble Court may kindly be pleased to call for the records of the case from the respondents.

**b.** The Hon'ble Court may kindly be pleased to direct the Respondent No. 01 to take appropriate steps to ensure safety and security of the petitioner and his family members.

**c.** The Hon'ble Court may kindly be pleased to direct the Respondent No. 01 to take appropriate steps for cancellation of the Bail/Suspension of sentence of the respondents No. 2 & 3.

**d.** The Hon'ble Court may kindly be pleased to grant any other relief as it deems fit and proper in the facts and circumstances of the case.

3. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others 1**, has examined the issue in paragraphs 27 and 28 and held as under:-

"27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Section 36 and 154 (3) before the concerned police officers, and if that is of no avail, under Section 156 (3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section Cr.P.C.

"28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

4. The judgment passed by Hon'ble the Supreme Court in Sakiri Vasu (Supra) has again come up for consideration before three judges (2008) 2 SCC 409 Bench in case of **M. Subramaniam & another Vs. S. Janaki & another 2**. The Supreme Court after considering the same judgment has held at para 7 & 9 which are as under:-

"7. The said ratio has been followed in Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, in which it is observed: (SCC p. 278, paras 2-4) "2. This Court has held in Sakiri Vasu V. State of U.P., that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156 (3) CrPC. If such an application under Section 156 (3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation."

"9. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156 (3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation."

5. From analysis of the above legal provisions, it is crystal clear that the writ petition under Article 226 of the Constitution of India is not maintainable before the High Court. However, it is open to the petitioner to approach the court of Judicial Magistrate First Class having territorial jurisdiction over the place of offence if it deemed appropriate and necessary for filing of complaint under Section 156(3) of Cr.P.C or Section 200 of Cr.P.C. and in-turn the Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C. It is made clear that this Court has not expressed any opinion on merits of the case whether the averments made in the petition discloses any criminal offence or not, it is for the concerning Magistrate to decide the case on merits of the case without being influenced by any of the observations made by this Court.

6. Considering the facts and materials on record and in view of the law laid down by the Hon'ble Supreme Court, this Court is of the view that this writ petition is not maintainable.

7. With the aforesaid observations, the writ petition (criminal) is disposed of with the aforesaid liberty in favour of the petitioner.

Sd/-  
**(Rajani Dubey)**  
**Judge**