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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.692/2020

Rashmi D/o Digambar Dakhore,
Aged about – 26 Years, Occu- Private,
R/o. C/o. Naresh Sangole,
Plot No.189, Near Ginjar mall,
Bezanbagh, Jaripatka, Nagpur.

..... PETITIONER

// VERSUS //

1. State of Maharashtra.
2. State of Maharashtra,
through the Commissioner of
Police, Nagpur.
3. State of Maharashtra,
through Police Station,
Jaripatka, Tah. and District Nagpur.
4. Police Station Officer,
Police Station Satara, Aurangabad
Dist – Aurangabad.
5. State of Maharashtra,
through the Commissioner of Police,
Aurangabad, Dist- Aurangabad.
6. Saurabh s/o Santosh Tiwari,
Aged about – 27 Years,
R/o. Padmavati Nagar, Godhni,
Satara, Aurangabad City,
Presently residing at Plot No.4,
Radha Krishna Mandir Suryavnshi
lay out, Godhni Railway, Godhni
Nagpur.

.... RESPONDENTS

Shri A. S. Band, Advocate for petitioner.
Ms. K. S. Joshi, P P for respondent nos. 1 to 5.

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CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATE : 11/03/2021

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

1] Heard.

2] **Rule.** Rule made returnable forthwith.

3] Heard finally by consent of the learned counsel appearing for the parties.

4] By this petition, the petitioner, who is a victim of serious crime and who has made a complaint making serious allegations against the accused, is placing before this Court the serious legality committed by one Police Officer holding a senior position in the police department which is of Deputy Commissioner of Police, which has been precipitated further by Aurangabad Police.

5] The petitioner had filed a complaint with Police Station, Jaripatka on 23.10.2019 alleging that she was taken for a ride and cheated by the accused, upon a promise of marriage thereby inducing her to enter into physical relationship with him at different places situated at Aurangabad, Pune, Nagpur, Godhani and Koradi and not only that, even trying to paint the petitioner in bad light by using some video clip which the accused has been alleged to have recorded without knowledge of the petitioner. The petitioner, in her complaint, has given

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all the necessary details to enable the police to carry out investigation into the cognizable offences disclosed in the complaint. But, instead of making investigation at Nagpur, the Deputy Commissioner of Police, Zone No.5, Nagpur city suddenly ordered transfer of the investigation to Aurangabad. According to the learned P. P., the investigation was transferred online on 24.10.2020. But, it is seen from the record that the actual transfer of the investigation occurred only after 12.11.2020 as till that date, the papers of the investigation had not been transferred to Aurangabad police. Even before transfer of the papers to Aurangabad, Police Station, Satara, District Aurangabad had registered offence on 26.10.2020 against the accused and it is seen from the record that Aurangabad police started the investigation in right earnest.

6] The investigation started so hurriedly was also completed with break neck speed and even the charge-sheet was filed on 24.12.2020 in the jurisdictional Court at Aurangabad. During this period of about one and half month between receipt of the papers of the investigation by Aurangabad police and filing of the charge-sheet in Aurangabad Court, the investigation, as seen from the case diary, has been literally rushed through. Some statements of the petitioner were recorded showing that the petitioner was a reluctant and non-cooperative witness who had refused to give any details of the spots of incident and even refused to show the spots of incident. This was

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against the background that the mobile numbers of the petitioner and the accused were provided and other details of the spots of incident were mentioned in the complaint itself. Aurangabad police came to Nagpur probably only once and on the excuse of the petitioner having refused to show the spot of incident, got one spot panchnama prepared, in which it has been mentioned that the spot panchnama was shown to the Investigating Officer by brother of the petitioner. In the spot panchnama nothing is mentioned about refusal of the petitioner to show the spot of incident. There is no record available with Aurangabad police which would show that any notice was issued to the petitioner calling upon her to remain present at Satara Police Station, Aurangabad for the purpose of investigation. The case diary does not show that any notice was issued to the petitioner requesting her to show to the police the spot of incident at Nagpur. The complaint refers to several spots of incidents such as Godhani, Koradi, Nagpur, Pune and also some places in Aurangabad. As regards the places situated at Godhani, Koradi, Nagpur and Pune, there is no investigation worth the name made by the Investigating Officer of Aurangabad. The only reason given is that the petitioner was non-cooperative throughout the investigation.

7] We are of the view that if the petitioner had been really non-cooperative in the matter and was not interested in the investigation, the petitioner would not have filed this petition making

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serious allegations against the police officers. The petitioner has also prayed for calling of explanation from respondent no.3 i.e. Investigating Officer of Police Station, Jaripatka as to why the Investigation was transferred. The fact is that the petitioner being apprehensive of the objectivity and efficacy of the investigation being made in this case by the police, the petitioner filed this petition. We are, therefore, of the view that the statements shown to be given by the petitioner to Aurangabad police reportedly expressing her unwillingness to co-operate with Aurangabad police cannot be believed and given any weight.

8] The above conclusion gets further support from the inadequate, rather a farce of the investigation made by Aurangabad police. Just one instance to quote here and we think the point would be clear. Aurangabad police, it is seen from case diary, has not made any reasonable attempt to trace out the mobile phone in which video clip showing the petitioner in bad light was stored. The Investigating Officer, Aurangabad, who is personally present before the Court, informs that the mobile handset was destroyed by the accused and therefore offence punishable under Section 201 of the Indian Penal Code has been registered against him. When we asked about the material on the basis of which an inference has been drawn about destruction of mobile phone, the Investigating Officer could not show to us any such material collected during the course of investigation. In fact, the Investigating

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Officer did not even bother to file application before the concerned Sessions Court at Aurangabad to seek cancellation of anticipatory bail granted to the accused. If one has to accept the reason put forward by the Investigating Officer for not seizing the mobile handset because it was destroyed by the accused, one has to also say that this was a very good ground for the Investigating Officer to have obtained the order for cancellation of the anticipatory bail granted to the accused. Destroying of a mobile handset in which some incriminating material was present amounts to tampering with evidence and on this ground alone, the anticipatory bail would have been cancelled, provided an attempt in this direction was made by the Investigating Officer. But, no such attempt was made by him. We have, therefore, a reason to believe that the investigation in this crime has been carried out in such a manner as to create some loopholes in the evidence that has been collected with a view to give some advantage to the accused and, therefore, appropriate inquiry and departmental action is warranted against the erring Investigating Officer.

9] Thus, we find that the statement of the petitioner recorded by Aurangabad police showing that the petitioner was an unwilling witness cannot be believed by us and we are inclined to reject the statement so recorded by Aurangabad police.

10] Now, we proceed to consider the reason for transfer of the

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investigation to Aurangabad police. There is no order placed on record by the respondents whereby the investigation has been transferred. It is only stated that now a days there is online process by which the transfer of investigation takes place. It is stated that the investigation was transferred on 24.10.2020. The online transfer of the investigation may be there on 24.10.2020, but, the actual transfer of the investigation could take place only after the FIR and other material which has been collected during whatever investigation which was done at Nagpur were physically transferred to the new Police Station. In the present case, such physical transfer of papers had taken place after 12.11.2020 as there is an order passed to this effect on 12.11.2020 directing the physical transfer of papers of the investigation. The date on which these papers were received by Aurangabad police has not been disclosed before the Court by Aurangabad Investigating Officer. Be that as it may, the material fact is of the time available for making of investigation. This time could be calculated from 13.11.2020 till 24.12.2020, the date of the charge-sheet came to be filed. This means hardly one month and 11 days time was available and utilized by the Investigating Officer in making investigation. This was relatively a short time but still investigation could be done provided, an all out effort is made. But, no effort is seen to be made by the Aurangabad police and even before the anticipatory bail granted to the accused could be cancelled, Aurangabad

police hurriedly filed a charge-sheet on 24.12.2020. These facts perhaps have some nexus with the order of transfer of investigation passed by the Deputy Commissioner of Police, Zone – 5, Nagpur. This officer ought not have transferred the investigation of this case to Aurangabad police, there being no legal reason available and yet he did it on specious ground that the primary spot of incident was situated near Bajaj Hospital, Aurangabad. The officer who transferred the investigation was a senior police officer, well trained in procedural criminal law, and so would know that when an offence like that of rape has been committed at different places, there would be multiple spots of incidents requiring equal attention, and making no distinction in between them so as to arbitrarily categorise them into primary, secondary, tertiary and the like spots of incident. But, the Deputy Commissioner of Police giving a novel ground of primary spot of incident chose to transfer the investigation to Aurangabad police. In fact, at Aurangabad, there were hardly two or three spots of incidents and whereas there were more than three or four spots of incidents situated in and around Nagpur. There were also spots of incidents situated at Pune. So, if there were any primary spots of incident, they were in Nagpur. But, the Deputy Commissioner gave prime importance to Aurangabad spots of incident, ignored all the other spots of incidents and transferred the investigation. There could not have been any more arbitrariness than what has been displayed by the

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Deputy Commissioner of Police. It is here that we find that transfer of investigation to Aurangabad, and Aurangabad police hurriedly completing the investigation leaving major loopholes in it on some pretext, all appears to be a well thought out strategy to give advantage to the accused, thinking that none can blame Nagpur police as investigation was not made by it and so also the Aurangabad police as the complainant did not co-operate (which is not true). This would call for thorough inquiry. We would only say that now the Commissioner of police at Nagpur would have to look into the matter, make inquiry into the arbitrariness shown by the Deputy Commissioner of Police in suddenly transferring investigation to Aurangabad and take such appropriate departmental action in the matter as deemed fit. Similar inquiry and action would have to be made and taken by Aurangabad Police Commissioner. But, till that time we cannot wait and we would have to pass effective directions in the matter.

11] In the circumstances, we find that this is fit for making interference in the investigation made so far. Accordingly, we allow this petition.

12] It is directed that the criminal case bearing RCC No.2116 of 2020 pending on the file of 14th Judicial Magistrate First Class, Aurangabad be transferred to the Court of Chief Judicial Magistrate, Nagpur with immediate effect.

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13] We further direct that this being a fit case for making further investigation into the complaint, the further investigation shall be carried out by Local Crime Branch in accordance with the mandate of Section 173(8) of the Cr. P. C. and such further investigation be completed within a period of eight weeks from the date of the order.

14] We further direct Commissioners of Police at Nagpur and Aurangabad to make inquiry respectively into the matter of sudden transfer of investigation by Deputy Commissioner of Police, Zone-5, Nagpur city to Aurangabad police and inadequate investigation by Aurangabad police and take such appropriate departmental action as may be warranted in the circumstances.

15] We also direct the Commissioner of police, Nagpur to frame guidelines, in consultation with the Law Officer of the police department and also learned public prosecutor, High Court, Nagpur, to be followed in the matter of transfer of investigation from one Police Station to another Police Station and circulate the same for their strict compliance and implementation in the city of Nagpur.

Rule is made absolute accordingly.

(AVINASH G. GHAROTE, J)

(SUNIL B. SHUKRE J.)