

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

**CRM-M-39362-2021 (O&M)
Date of decision-21.09.2021**

Bittu Kumar

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sumit Jain, Advocate for the petitioner.

Mr. Ramandeep Singh Sandhu, Sr.DAG, Punjab.

MANOJ BAJAJ, J. (Oral)

This petition under Section 482 Cr.P.C has been filed seeking issuance of directions to respondent No.1 to transfer the investigation of case FIR No.199 dated 10.12.2020 registered under Sections 18, 29, 61 and 85 Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City-I Mansa, Punjab to Central Bureau of Investigation or any other independent agency for conducting fair investigation. Further, it has been prayed that directions be issued for registering FIR against respondent Nos.3 to 9.

Learned counsel for the petitioner has argued that the petitioner was falsely implicated in the above mentioned FIR and has been released on anticipatory bail vide order dated 31.08.2021 passed in CRM-M-4956-2021. He submits that the petitioner has already given a representation dated 30.12.2020 (Annexure P-8) for holding inquiry against police officials and

necessary action be taken against them. In support of his argument, learned counsel for the petitioner has relied upon the decision of Hon'ble Supreme Court in “*Babubhai Jamnadas Patel Vs. State of Gujarat and others*”, (2009) 9 SCC 610.

During the course of hearing, it is not disputed by learned counsel that investigation qua the petitioner is complete and final report has already been filed on 17.04.2021 before the Court of competent jurisdiction, however, the said final report has not been placed on record.

After hearing learned counsel and considering the above background, this Court is of the opinion that as the investigation in the subject FIR is already complete qua the petitioner and the said final report is yet to be considered by the Court of competent jurisdiction, therefore, at this stage, this Court does not find any valid ground to transfer the investigation as it would amount to *de novo* fresh investigation. The judgement relied upon by the learned counsel for the petitioner is not applicable in the present set of facts and circumstances of this case.

Apart from it, it is also settled law that the accused cannot maintain the petition for transfer of investigation and reference can be made to the decision of Hon'ble Supreme Court in *Romila Thapar and others Vs. Union of India and others*, 2018 (10) SCC 753, and the relevant observation is extracted below:-

“30. In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation. The first two modified reliefs claimed in the writ petition, if they were to

be made by the accused themselves, the same would end up in being rejected. In the present case, the original writ petition was filed by the persons claiming to be the next friends of the concerned accused (A16 to A20). Amongst them, Sudha Bhardwaj (A19), Varvara Rao (A16), Arun Ferreira (A18) and Vernon Gonsalves (A17) have filed signed statements praying that the reliefs claimed in the subject writ petition be treated as their writ petition. That application deserves to be allowed as the accused themselves have chosen to approach this Court and also in the backdrop of the preliminary objection raised by the State that the writ petitioners were completely strangers to the offence under investigation and the writ petition at their instance was not maintainable. We would, therefore, assume that the writ petition is now pursued by the accused themselves and once they have become petitioners themselves, the question of next friend pursuing the remedy to espouse their cause cannot be countenanced. The next friend can continue to espouse the cause of the affected accused as long as the concerned accused is not in a position or incapacitated to take recourse to legal remedy and not otherwise.

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32. A fortiori, it must follow that the writ petitioners, who are strangers to the offence under investigation (in FIR No.4/2018); and since they are merely espousing the cause of the arrested five accused as their next friends, cannot be heard to ask for the reliefs which otherwise cannot be granted to the accused themselves. What cannot be done directly, cannot be allowed to be done indirectly even in the guise of public interest litigation.”

Resultantly, no case is made out for exercise of inherent powers under Section 482 Cr.P.C and the petition is dismissed.

(MANOJ BAJAJ)
JUDGE

21.09.2021
geeta/vanita

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