IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

37 CRIMINAL WRIT PETITION NO. 48 OF 2022

RAHIM S/O RAMZAN TELI, INJURED AND ADMITTED IN HOSPITAL, THROUGH HIS WIFE NOORJANHA W/O RAHIM TELI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
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Advocate for Petitioners : Mr. Waramaa B. R.
APP for Respondent-State : Mrs. D. S. Jape
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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 21st FEBRUARY, 2022

PER COURT:-

1. The petitioner, who is the original complainant in connection with crime no. 6/2022, has filed this petition through his wife mainly with a prayer that the Investigating Officer is not fairly conducting the investigation so far as the crime registered at the instance of the petitioner-complainant and in view of the same, seeking transfer of the investigation of the crime to any other agency.

2. Learned counsel for the petitioner submits that after the brutal assault, the petitioner was taken to the Government Hospital where he was not treated for various reasons and in view of the same, he was to be taken to the private hospital at Dhule. Further, even though

the Azadnagar Police Station, Dhule has pointed out the same to the present Investigating Officer attached to Amalner Police Station, however, the Investigating Officer did not permit the Azadnagar Police Station, Dhule to register crime under zero number and further directed the Azadnagar Police Station, Dhule to forward the statement of the petitioner recorded by the said police station when he was the indoor patient of the said private hospital. Learned counsel submits that consequently, in respect of the incident allegedly occurred on 05.01.2022, the FIR shown to have been registered on 08.01.2022. Thus, there is delay in recording the FIR not due to the fault on the part of the petitioner, but on the part of the Investigating Officer. Learned counsel submits that the Investigating Officer has not recorded the statement of the witnesses and he is unfair to the petitioner and on the other hand, he has given more weightage to the crime registered on the basis of the complaint lodged in connection with crime no. 3/2022. Learned counsel submits that the petitioner has sustained life threatening injuries in the alleged incident. He was assaulted with the deadly weapon knife. However, there is no fair investigation in connection with his allegations.

3. Leaned counsel for the petitioner, in order to substantiate his contention, placed reliance on the case ***Karan Singh v. State of Haryana and Another***, reported in AIR 2013 SC 2348.

4. We have requested learned APP to call report from the Investigating Officer.

5. On careful perusal of the report and the contents of the FIR bearing crime no. 3/2022 registered for the offence punishable under Sections 307, 452, 143, 147, 149, 120-B of IPC, and crime no. 6/2022 registered for the offence punishable under Section 326 r/w 34 of IPC, it appears to us that there was almost a free fight between two groups and in consequence thereof, both the groups have lodged complaints against each other. It further appears that the persons from both the groups are closely related to each other and there was a property dispute. In the said fight, the present petitioner has sustained severe injuries so also the person from other side, namely, Razzak Ramzan Teli also sustained severe injuries. Two complaints came to be filed in respect of the incident occurred on the same date, time and place. So far as the said Razzak Ramzan Teli i.e. the person from the opposite group is concerned, an attempt was made to break his both hands and legs. On perusal of the report submitted before us,

it appears that the Investigating Officer has not only registered two separate crimes on the basis of the allegations made in the respective FIRs, however, he is trying his best to investigate both the crimes by giving equal treatment to both the parties.

6. It is true that investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused that investigation was not fair and may have been carried out with some ulterior motive. In the instant petition, though learned counsel for the petitioner has vehemently submitted about belated recording of the FIR on the basis of the complaint lodged by the present petitioner, however, we find no substance in it. It appears that the petitioner when admitted in private hospital at Dhule, his statement was immediately recorded by the Azadnagar Police Station, Dhule and if the same is forwarded thereafter to the concerned police station at Amalner, there is no question of causing delay in lodging the complaint. It is for the trial court to consider the same. We find the apprehension expressed by the petitioner in this regard is ill-founded.

7. In the case of ***Karan Singh v. State of Haryana and Another***, (supra), relied upon by learned counsel for the petitioner, in para 12

of the judgment the Supreme Court has made the following observations:

> *"12. The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused, that investigation was not fair and may have been carried out with some ulterior motive. The Investigating Officer must not indulge in any kind of mischief, or cause harassment either to the complainant or to the accused. His conduct must be entirely impartial and must dispel any suspicion regarding the genuineness of the investigation. The Investigating Officer, "is not merely present to strengthen the case of the prosecution with evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth." Ethical conduct on the part of the investigating agency is absolutely essential, and there must be no scope for any allegation of mala fides or bias. Words like 'personal liberty' contained in Article 21 of the Constitution of India provide for the widest amplitude, covering all kinds of rights particularly, the right to personal liberty of the citizens of India, and a person cannot be deprived of the same without following the procedure prescribed by law. In this way, the investigating agencies are the guardians of the liberty of innocent citizens. Therefore, a duty is cast upon the Investigating Officer to ensure that an innocent person should not suffer from unnecessarily harassment of false implication, however, at the same time, an accused person must not be given undue leverage. An investigation*

cannot be interfered with or influenced even by the courts. Therefore, the investigating agency must avoid entirely any kind of extraneous influence, and investigation must be carried out with equal alacrity and fairness irrespective of the status of the accused or the complainant, as a tainted investigation definitely leads to the miscarriage of criminal justice, and thus deprives a man of his fundamental rights guaranteed under Article 21 of the Constitution. Thus, every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the rules of law, as is required under Articles 19, 20 and 21 of the Constitution. (Vide: Babubhai v. State of Gujarat & Ors., (2010) 12 SCC 254) : (2010 AIR SCW 5126) .”

8. In the instant case, it appears to us that the Investigating Officer is proceeding with the investigation in accordance with law. Learned APP has also informed to us that the investigation is almost over and the Investigating Officer is likely to file charge-sheet in connection with both the crimes. We find nothing substantive in this writ petition. On the other hand, it appears that the petitioner is unnecessarily pressurizing the investigating agency to carry out one-sided investigation in terms of the complaint lodged by him and to ignore the allegations made by the other side on the basis of which, crime no. 3/2022 is registered. We need to protect the Investigating Officer who is carrying out fair, transparent and just investigation in

this case. We find no reason to entertain this petition seeking transfer of the ongoing investigation. Accordingly, the criminal writ petition is hereby dismissed.

(SANDIPKUMAR C. MORE, J.) (V. K. JADHAV, J.)

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