

CRWP-1567-2022 (O&M)

Through Video Conference

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

**CRWP-1567-2022 (O&M).
Decided on: February 22, 2022.**

Gurpreet Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

**PRESENT: Ms.Jasneet Mehra, Advocate,
for the petitioner.**

Mr.C.L.Pawar, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Article 226 of the Constitution of India with a prayer for issuance of directions especially in the nature of *mandamus* directing respondent Nos.2 and 3 to protect the life and liberty of the petitioner.

Learned counsel for the petitioner has submitted that the petitioner had given on rent his JCB machine and 3 tippers to the private respondents No. 5 and 6 who are real brothers in the month of April 2021.

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Thereafter, when these machines and tippers were being used by them, FIR No.0047 dated 13.6.2021, was registered vide Annexure P-1, under Section 21 (1) of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 379 IPC at Police Station, Dera Baba Nanak, District Gurdaspur, on the allegations of illegal mining. In the above FIR, the brother of the petitioner namely Jagpreet Singh son of Tarsem Singh, is also an accused. Learned counsel submitted that both respondent Nos.5 and 6 did not pay the rent of Rs.5,40,000/- to the petitioner and stated that they are working in the police Department and they will get him involved in cases and when the petitioner demanded money from them, the challan was presented against the petitioner in the aforesaid FIR. Learned counsel referred to the representation (Annexure P-2) which was given to the Deputy Commissioner of Police, Gurdaspur, and the prayer made in the petition was for getting the name of the petitioner deleted from the challan and to take action against respondent Nos.4, 5 and 6 apart from recovery of amount of Rs.5,40,000/- from them which is the rent due in favour of the petitioner.

On the other hand, learned Sr. DAG, Punjab, has stated that he has received an advance copy of the present petition and has perused the same and has also sought instructions. He submitted that firstly the representation (Annexure P-2), if any, has been given to the Deputy Commissioner of Police, Gurdaspur, there is no such officer in District Gurdaspur and District Gurdaspur is being headed by the Senior

Superintendent of Police, and therefore, such representation cannot be taken into consideration and is liable to be ignored. Secondly, respondent no.2 in the present petition has been arrayed by the name the Senior Superintendent of Police, Mohali ,who has nothing to do with this case and therefore, the entire petition is defective. On merits, he has submitted that powers under Article 226 of the Constitution of India, cannot be invoked for the purpose of recovery of rent due and so far as prayer for taking action against the private respondents No.5 and 6, is concerned, the recourse of law should be taken by adopting the suitable remedy which is available to the petitioner, in accordance with law, such as, by filing of appropriate application before the learned Illaqua Magistrate, if so advised and so desired. He further submitted that grievance of the petitioner contained in such kind of representation and payer ought to be raised before appropriate forum and not before the High Court in exercise of power under Article 226 of the Constitution of India.

I have heard the learned counsel for the parties.

The petitioner has given representation to Deputy Commissioner of Police, Gurdaspur and such designation is not in existence. Petitioner has prayed orally that he may be substituted for the Senior Superintendent of Police, Gurdaspur. Such kind of prayer cannot be accepted in view of the fact that the present petition is filed under Article 226 of the Constitution of India, seeking a writ in the nature of *mandamus* and for that purpose the pre-requisite *sine qua non* is filing of suitable

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representation/complaint which has not been done in the present case. Such a substitution cannot be done for changing the designation of the police official in the representation which has not been given to him. Further, the powers under Article 226 of the Constitution of India, cannot be invoked for the purpose of recovery of rent due. So far as the grievance of the petitioner pertaining to any offence committed by any person is concerned, the appropriate remedy is to approach the learned Illaqua Magistrate, if so advised and so desired, keeping in view the law laid down by the Hon'ble Supreme Court in **Sakiri Vasu Vs. State of U.P. 2008 (1) RCR (Criminal) 392.**

So far as prayer pertaining to protection of life and liberty of the petitioner is concerned, the same can be considered only if the petitioner has exhausted his remedy of filing suitable complaint/representation to the District Police Head and in case the grievance is not redressed by the District Police Head then such kind of petition may be filed but certainly not before approaching the District Police Head. Therefore, finding no merit in the present petition, the same is hereby dismissed.

February 22, 2022
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No