

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

114

CWP-19265-2022
Date of Decision: 30.08.2022

KARAMCHAND

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sachin Kaushik, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. AG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been filed under Articles 226/227 of the Constitution of the India for issuance of a writ in the nature of Mandamus directing the respondent No.2:-

- (i) to investigate in a fair and proper manner the case bearing FIR No.195 dated 17.05.2022 registered under Sections 302, 201, 34 IPC, 1860 and Section 3(2)(v) of SC/ST Act, 1989 at Police Station Rohtak Sadar, Rohtak either himself or to hand over the investigation to any other investigating team under his direct supervision.
- (ii) to take appropriate legal action against the accused Pradeep son of Bheera and Rakesh @ Kala son of Ramkaran, both residents of village Sanghi in the above said FIR and to arrest them in the said case.

The first prayer made by the petitioner is to direct the official respondent No.2 to carry out a fair and impartial investigation in the above mentioned case.

A perusal of the petition as well as the appended documents shows that there is no attribution of any malice or ill-will against the investigating agency and/or investigating officer. Consequently, there is no reason for the Court to assume that the investigating agency is not doing its job fairly, properly and impartially. Besides, the petitioner has also failed to substantiate any possibility of bias on account of the suspects and/or accused persons having any close nexus with the investigating agency/investigating officer. In the absence of substantive allegations and documents to substantiate the same, any apprehension which may be nurtured by the petitioner, would not be sufficient for the Court to assume that the investigating agency is not undertaking its responsibilities in a fair and impartial manner.

The Hon'ble Supreme Court had held in the matter of **State of NCT of Delhi Vs. Sunil** reported as **(2000) 1 SCC 748** as under:

“It is an archaic notion that action of police officer should be approached with initial distrust. It is time now to start placing initial trust on the actions and documents made by the police. At any rate, the Court cannot start with the presumption that police records are untrustworthy. As a proposition of law, the presumption should be the other way round.”

Bias is not a presumption. It is a fact to be established. If the Court proceeds with a presumption of bias against an investigating agency or investigating officer, the police officers shall always be vulnerable to attack for discharge of their duties in normal course.

The dissatisfaction of the complainant or an accused to the manner, pace or direction of investigation, does not by itself, render the investigation activated by bias or malice. There is a requirement for producing evidence beyond unsubstantiated allegations to demonstrate bias, malice, mischief, abuse of authority, partisan approach and deliberate misconduct before a Court of law

proceeds to record such finding and decides to transfer investigation to some other agency.

The prayer made by the petitioner thus cannot be allowed for want of sufficient evidence.

The second prayer of the petitioner relates to directing the official concerned to arrest the suspects/accused persons namely Pradeep son of Bheera and Rakesh @ Kala son of Ramkaran. The aforesaid prayer made by the petitioner cannot be granted at this stage. It is the prerogative of the investigating agency to come to a conclusion as to whether the custodial interrogation/ investigation of the above mentioned suspects/accused persons is required or not. It would be a transgression of jurisdiction by the High Court to direct the arrest of any person against whom the charges have not yet been proved.

It is well settled position in law that power to arrest is distinct from need to arrest. Merely because the investigating agency is vested with a power to arrest would not justify need to arrest. An investigating agency is required to establish need for custodial detention of an individual before one is required to be arrested. Needless to mention that liberties and freedoms granted to a citizen are crucial and are not to be trampled upon to demonstrate a vested power bereft of necessity. Such brazen display of unbridled power is likely to erode faith in Role of Law. Unless sufficient reasons are shown justifying need to arrest, any such demand needs to be ignored.

Further the Hon'ble Supreme Court has also held in the matter of **P. Chidambram Vs. Directorate of Enforcement** reported a **2019(9) SCC 24** as under:

*“63. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. In **State of Bihar and another v. P.P. Sharma, IAS and another 1992 Supp. (1) 222**, it was held that*

"The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order.Enough power is therefore given to the police officer in the area of investigating process and granting them the Court latitude to exercise its discretionary power to make a successful investigation...". In Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria (1998) 1 SCC 52, this Court held that ".....it is not the function of the Court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual."

64. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the Court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.

65. It is one thing to say that if the power of investigation has been exercised by an investigating officer mala fide or non-compliance of the provisions of the Criminal Procedure Code in the conduct of the investigation, it is open to the Court to quash the proceedings where there is a clear case of abuse of power. It is a different matter that the High Court in exercise of its inherent power under Section 482 Cr.P.C., 1973 the Court can always issue appropriate direction at the instance of an aggrieved person if the High Court is convinced that the power

of investigation has been exercised by the investigating officer mala fide and not in accordance with the provisions of the Criminal Procedure Code. However, as pointed out earlier that power is to be exercised in rare cases where there is a clear abuse of power and non-compliance of the provisions falling under Chapter-XII of the Code of Criminal Procedure requiring the interference of the High Court. In the initial stages of investigation where the Court is considering the question of grant of regular bail or pre-arrest bail, it is not for the court to enter into the demarcated function of the investigation and collection of evidence/materials for establishing the offence and interrogation of the accused and the witnesses.”

Consequently, the instant petition is hereby dismissed, at this stage.

However, the petitioner would be at liberty to take recourse to the alternative remedies available to him in accordance with law.

30.08.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No