

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-21342-2023  
DATE OF DECISION:-16.05.2023

Manjinder Singh ...Petitioner

vs.

State of Punjab and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr.A. D. S. Sukhija, Advocate, for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

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**HARKESH MANUJA, J.**

(1) By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, prayer has been made for transfer of investigation in case FIR No.25 dated 07.02.2023 under Sections 307, 323, 341, 148, 149, 506, 160 IPC and Sections 25, 27 of Arms Act, registered at Police Station Division No.5, Ludhiana, to some Senior Police Officer posted outside Ludhiana.

(2) Learned counsel for the petitioner submits that in the present case, the petitioner being witness to an incident resulting in registration of FIR No.20 dated 10.02.2020 under Sections 232, 452, 427, 148, 149 IPC, at Police Station Model Town, District Police Commissionerate, Ludhiana, wherein Mastan Singh Rambo, Jaspreet @ Sahil and few others were arrayed as accused, was going to depose before the trial Court accompanied by his brother and few others on the date of present incident when they were way-laid by the assailants led by Mastan Singh Rambo, Jaspreet @ Sahil and others and were given injuries. He further submits that Mastan Singh and his accomplice being the assailants tried to stop the petitioner and his associates from entering the Court premises for deposing

against them, however, without any complaint, eye-witness, preliminary inquiry or prima facie evidence, the petitioner and others have been arrayed as accused in FIR No.25 dated 07.02.2023 under Sections 307, 323, 341, 148, 149 506, 160 IPC and Sections 25, 27 Arms Act, Police Station Division No.5, Ludhiana. He further points out that instead of taking any action against the real culprits and the assailants, the investigating agency is only after the petitioner. In this regard, he also points out to the status report dated 16.05.2023, filed under the signatures of Assistant Commissioner of Police, Civil Lines, Ludhiana, today in Court to submit that even as per the averments made therein, the factum of stopping the petitioner party by Mastan Singh Rambo and his associates has been duly mentioned and acknowledged therein, however, still the petitioner and others are proceeded against as accused under the influence of assailants so as to pressurize the petitioner party to enter into some kind of settlement and thus, submits that the investigation is apparently not being done in a fair and impartial manner.

(3) On the other hand, learned State counsel on instructions from ASI Sulakhan Singh, submits that investigation in the present case is still going on and the factum of innocence shall be determined as and when the same is concluded and the final investigation report is submitted before the Illaqa Magistrate.

(4) I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

(5) At the outset, it may be pointed out that fair investigation is the back-bone of rule of law which can only lead to fair trial and thus the same

forms the very basis of our criminal jurisprudence of preserving fundamental rights emanating from the constitutional mandate contained under Articles 20 & 21 of the Constitution of India.

My aforesaid view has even been derived from the observations made by Hon'ble Supreme Court in **Hema Vs. State, through Inspector of Police, Madras**, 2013 (1) RCR (Criminal) 869 and **Mithilesh Kumar Singh Vs. Sate of Rajasthan**, 2015 (1) RCR (Criminal) 437. Relevant extract of para 8 of **Hema's** case (supra) is reproduced hereunder:-

*“8. It is settled law that not only fair trial, but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Accordingly, investigation must be fair, transparent and judicious and it is the immediate requirement of rule of law. As observed by this Court in Babubhai vs. State of Gujarat and Others, 2010 (12) SCC 254, the Investigating Officer cannot be permitted to conduct an investigation in a tainted and biased manner. It was further observed that where non-interference of the Court would ultimately result in failure of justice, the Court must interfere.....”*

(6) From the facts and circumstances of the present case as stated in the petition as well as in the reply dated 16.05.2023 filed under the signatures of Assistant Commissioner of Police, Ludhiana, it can easily be traced out that the petitioner and his brother were to appear as witness in trial arising from FIR No.20 of 2020 under Section 452 IPC, registered at Police Station Model Town, Ludhiana; whereas the perpetrators, namely, Mastan Singh Rambo, Jaspreet @ Sahil, Jaskaran Singh, Lovedeep and

few others tried to stop them from doing so and attacked them. To substantiate this, relevant portion from para 1 of the affidavit filed by the respondents is reproduced hereunder:-

*“It was further informed that the opposite party of the petitioner namely Mastaan Singh, Jaspreet @ Sahil, Jaskaran Singh, Lovedeep and some other unknown persons have also came there and they desist stopping Gurcharan Singh from giving evidence against them in the said FIR on which exchange of abusive language and scuffle started between both the parties and both the parties attacked on each other with sharp edged deadly weapons in order to kill each other and during that Gunshot was also fired in which some youngsters have also sustained injuries.....”*

(7) All of this goes to show that aforementioned persons/ perpetrators without any provocation being dejected with their efforts, yielded little success in persuading the petitioner and his brother not to appear against them as witness, by way-lading and attacking them. Thus, evidently there being no incitement from the side of petitioner or his associates, it was the rival party which took the initiative being an aggressor, although, the investigating agency without any basis showed unwarranted amazing swiftness by implicating the petitioner and his associate as accused by recording FIR No. 25 dated 07.02.2023 without even conducting any inquiry or investigation as regards their role or involvement in the incident. Even, learned State counsel has not been able to explain the arraying of petitioner and his associates in the

aforementioned FIR as accused, especially in view of the averments made in affidavit dated 16.05.2023.

(8). All this seemingly, in all probabilities appears to be animated by the investigating agency for one purpose only i.e. to pressurize the petitioner and his associates not to appear as witness against the perpetrators and to enter into some kind of settlement with them for which the petitioner and his associates ostensibly disinclined. Once the investigating agency even as per its reply was itself deeply conscious of the fact that the petitioner and his associate were never the aggressors and were just intending to appear as witness against the perpetrators, the implication as accused appears to be beyond comprehension.

(9) In the aforesaid facts and circumstances, rather than providing their own shoulders to the perpetrators to fire their guns from, respondents No.3 & 4 were required to be more vigilant while carrying out investigation which at this stage appears to be unusually misdirected, thereby giving birth to reasonable strong suspicion to the petitioner thereby compelling this Court to order for shifting the investigation of FIR No.25 dated 07.02.2023 under Sections 307, 323, 341, 148, 149, 506, 160 IPC and Sections 25, 27 of Arms Act, registered at Police Station Division No.5, Ludhiana, outside the limits of Commissionerate of Police, Ludhiana, so as to ensure meaningful enforcement of the right of fair investigation of the petitioner.

(10) In view of the circumstances mentioned hereinabove, the petition is allowed and Investigation of the aforementioned FIR shall stand transferred to District Mohali. The SSP, Mohali shall constitute a Special Investigation Team headed by an officer not below the rank of DSP so as

to carry out investigation in the aforementioned FIR. Needful shall be done within a period of four weeks from today.

16.05.2023  
anil

(HARKESH MANUJA)  
JUDGE

whether speaking/reasoned: Yes/No  
whether reportable: Yes/No