

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

LPA-930-2022

Date of Decision: 19.01.2023

Santosh Kumari

.....Appellant(s)

Versus

State of Punjab and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Baltej Singh Sidhu, Sr. Advocate,
with Mr. Chandan Singh, Advocate,
and Mr. K.S. Brar, Advocate,
for the appellant.

G.S.SANDHAWALIA, J.

The present appeal has been filed against the order passed by the learned Single Judge in CWP No. 23220 of 2021 on 18.08.2022. Vide the judgment, the writ petition was partly allowed which was filed by the appellant herself to the extent that a new Special Investigating Team (SIT) was constituted to be headed by the Additional Director General of Police i.e. not less than the rank of the Additional Deputy General of Police and Constituent Members of the SIT were not to be lower than the rank of Senior Superintendent of Police. The said SIT was to take over the investigation from the SIT headed by Sh. Kesar Singh, PPS, SP(PBI), Patiala and the report was to be submitted to the concerned Court at the earliest.

The relief which had been sought in the writ petition was to get the further investigation in FIR No. 101 dated 22.06.2019 under Sections 302, 120-B, 34 IPC and Section 52-A of Prisons Act registered at P.S. Nabha to be conducted by the CBI or any other independent agency as the State Police has arbitrarily and illegally not investigated the conspiracy part of the case in question. The case was pertaining to the death of Mohinder Pal @ Bittu, husband of the appellant, who is stated to have died in judicial custody while

A perusal of the order of the learned Single Judge would go on to show that he has referred extensively to the diary notes of the deceased in which allegations were made against the police official. It was also noticed that there was earlier litigation and a finding was recorded that the composition of SIT was of PPS Officers and one Sub Inspector who were lower in rank than the persons against whom the allegations were made in the diary. It also transpires that the torture of the deceased as such was to get a confession regarding the matters in sacrilege cases. In sacrilege cases, the investigation was taken from CBI and was entrusted to SIT. Challenge had been raised and this Court had endorsed the matter to be investigated by the SIT as against the closure report given by the CBI. It is, thus, apparent that the learned Single Judge has also given the alternative relief as such which was prayed for by the writ petitioner and the discretion which has been exercised by the learned Single Judge while constituting the SIT, in our considered opinion, has been justifiably exercised. Therefore, no reasonable ground as such would also be there on merits that the investigation as such should only be conducted by the CBI. We had put the query to the senior counsel as to how the present appeal would be maintainable in view of the judgment of the Apex Court in ***Ram Kishan Fauji vs. State of Haryana and others, 2017 AIR (SC) 1535.***

Senior counsel has been fair enough to point out that there are two judgments of the Division Bench which have also dismissed the letters patent appeals on the ground of maintainability while referring to the judgments in ***Jalaluddin vs. State of Haryana and others, 2018 (2) PLR 168*** and ***LPA No. 329 of 2019, Charanjit Singh and another vs. State of Punjab***

stated to be pending in *Jalaluddin's case (supra)*. Heavy reliance as such has been placed upon the judgment of the Calcutta High Court in ***The Director General of Police (W.B.) and others vs. Gopal Kumar Agarwal and another, 2020 (3) Cal. L.T. 158*** to submit that both the above said judgments were distinguished as such by the Division Bench of the Calcutta High Court which has proceeded as such to hold that the appeals were maintainable on the ground that no point of criminal law was decided by the learned Single Judge. Thus, we are of the view that in view of the said co-ordinate Bench judgments, there is no need to take a divergent view.

In such circumstances, we are of the considered opinion that the discretion which has been exercised by the learned Single Judge is not liable to be interfered with as the writ petition has been partly allowed and the complainant as such had herself asked that the investigation in the alternative be done by an independent agency. The learned Single Judge has been graceful enough to constitute the SIT in the manner in which high rank police officials of the rank of the Additional Deputy General of Police and the Senior Superintendent of Police have been made members and, therefore, there can be no such apprehension that the same would favour the accused in any manner.

Resultantly, we are of the considered opinion that the order as such does not call for any interference in the present appeal and the same stands dismissed in *limine*.

(G.S. SANDHAWALIA)
JUDGE

19.01.2023

shivani

Whether reasoned/speaking

Whether reportable

(HARPREET KAUR JEEWAN)
JUDGE

Yes

No