

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

112

CRM-M-60444-2023 (O&M)

Date of decision: 01.12.2023

Fxxxx

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Nasir Jamal, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for giving direction to official respondents i.e. respondent Nos. 2 to 4 to conduct fair, proper and impartial investigation in case bearing FIR No. 271 dated 25.07.2023, registered under Sections 376D, 452, 506 of the IPC at Police Station Ferozepur Jhirka.

2. Brief facts of the case relevant for the purpose of disposal of the present case are that the aforementioned FIR has been registered on the basis of the complaint submitted by petitioner 'F' (*name withheld*) alleging therein that she was married in village Gulpada but was living in her parental home at village Baikheda. On 20.07.2023, while she was sleeping in a room of her house, private respondents i.e. respondent Nos. 5 and 6 entered into the said room at about 01/01:30 A.M. They caught hold of her and while threatening to kill her, the committed rape upon her turn by turn. They had also gagged her mouth. The petitioner managed to raise alarm, on hearing of which, her family members had woken up and thereafter, the

private respondents tried to flee. However, respondent No. 5 was caught up by her family members. The police had been called up by her father. However, on the asking of respectables of the village and police officials to settle the matter at community level, the formal FIR was not lodged. A Panchayat was convened on the next day. However, respondent Nos. 5 and 6 did not join the same and thereafter, the present FIR was lodged only on 25.07.2023.

3. The present petition has been filed by the petitioner on the ground that even after registration of the FIR on 25.07.2023, respondent No. 4 has not arrested the private respondents and the Investigating Officer of the case is shielding them due to some extraneous consideration. The petitioner has even filed a representation dated 21.08.2023 (Annexure P-3) before the official respondents but still no action has been taken. Therefore, the petitioner has made prayer for directing the official respondents to conduct fair, transparent and impartial investigation in the matter, to arrest the private respondents and has also made prayer for protecting the life and liberty of herself as well as her family members at the hands of the private respondents as they are extending threats to them

4. I have heard learned counsel for the petitioner on the preliminary stage and have also perused the record thoroughly.

5. Learned counsel for the petitioner contends that despite registration of the FIR, the police authorities are not conducting any further investigation in the matter in a fair and impartial manner and have not arrested the private respondents, thereby causing grave prejudice to the petitioner. Hence, he has argued that the official respondents are liable to be

given direction to conduct fair and impartial investigation. He has further argued that there is eminent threat not only to the life and liberty of the petitioner but to her family members as well at the hands of private respondents. Therefore, they deserve to be given necessary direction in this regard.

6. On due consideration of the contentions as raised by learned counsel for the petitioner, in the considered opinion of this Court, first and foremost question that arises for consideration is as to whether, a direction for conducting investigation in a fair and proper manner can be given by this Court to the official respondents or not. This question stands answered in view of ratio of law laid down by Hon'ble Supreme Court in a catena of judgment. Reliance can be placed upon ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and others, (2016) 6 SCC 277***, wherein it was observed that if proper investigation is not being done by the police then the remedy for the aggrieved person is not to go to High Court but to approach the Magistrate concerned under Section 156(3) of Cr.P.C. as it is the Magistrate who can give direction for registration of FIR and even to conduct proper investigation to be done. Reliance can further be placed upon ***Sakiri Vasu v. State of U.P., (2008) 2 SCC 409***, wherein it was observed that if a person is having grievance that his FIR has not been registered by the police or the same having been registered, proper investigation is not being done, then the remedy of aggrieved person is not to go to the High Court under Article 226 of the Constitution of India but to approach the Magistrate concerned under Section 156 (3) of Cr.P.C. If such application under Section 156(3) Cr.P.C. is made and the Magistrate is,

prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done, which includes in his discretion, if he deems it necessary, recommending change of the Investigating Officer, so that a proper investigation is done in the matter. Similar observations were made by Hon'ble Supreme Court in ***M. Subramaniam and another vs. S. Janki and another, 2020 (2) RCR (Criminal) 788*** and by the Allahabad High Court in a recent judgment dated 23.08.2023 pronounced in ***Criminal Misc. Petition No. 13346 of 2023*** titled as ***Mohini vs. State of U.P.*** and also by Delhi High Court in ***Dilawar Singh vs. State of Delhi, 2007 (4) RCR (Criminal) 115.***

7. In view of the above discussed settled proposition of law, it is held that the prayer made by the petitioner for giving direction to respondent Nos. 2 to 4 for conducting fair and impartial investigation or to take action on her representation, which is filed on the similar grounds, cannot be accepted, being not maintainable. However, so far as the relief claimed by the petitioner for giving direction to respondent Nos. 2 to 4 to provide protection to her as well as her family members, as they are apprehending danger and threat at the hands of private respondents, is concerned, the same deserves to be granted as it is submitted by the petitioner the private respondents are having political clout and have been extending threats to her as well as her family members and they are even pressurizing her to withdraw the FIR.

8. Accordingly, without going into the merit of the allegations, as levelled by the petitioner, the present petition is disposed of with a direction to respondent Nos. 2 to 4 to look into the grievances of the petitioner as

expressed in her representation (Annexures P-3 & P-4) qua protection of her life and liberty as well as of her family members and take proper action, if any warranting the circumstances.

01.12.2023
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>