

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRWP-377-2024(O&M)

Date of order: 22.04.2024

Bhupinder Kaur

.....Petitioner(s)

Vs.

State of Punjab & Others

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vivek Salathia, Advocate
for the petitioners.

Ms. Aakanksha Gupta, AAG Punjab.

None for respondents No.5 and 6.

Mr. Kushagra Mahajan, Advocate
for respondent No.7.

Nidhi Gupta, J.

Prayer in the present petition filed by the complainant is for issuance of directions to respondents No.2 and 3 for protection of life and liberty of the petitioner and her family members which is in eminent danger at the hands of arrayed private respondents No.5 to 7, who are threatening the petitioner and her family members with dire consequences and have threatened the petitioner that in case she does not withdraw the FIR No.137 dated 13.12.2023 registered under Sections 363, 366-A and 376 IPC and Section 4 POCSO Act (Annexure P1) at Police Station Division E, Police Commissionerate, Amritsar, then either she would be eliminated or she or her family members would be involved in a false case; and further

for issuance of directions to respondents No.2 and 3 to conduct a fair, impartial and independent investigation in the said FIR.

2. Mr. Kushagra Mahajan, Advocate puts in appearance on behalf of respondent No.7 and files Power of Attorney, which is taken on record.

3. Learned counsel for the petitioner/complainant inter alia vehemently submits that victim in the present case is the minor daughter of the petitioner. The victim was 13 years of age when she was kidnapped by the accused/respondents No.5 to 7 herein. The victim was subsequently sexually abused by the said respondents; and when the petitioner got the present FIR (Annexure P1) registered, the police authorities neither arrested the accused persons nor disclosed as to from where the victim was recovered. In this regard, learned counsel refers to the FIR (Annexure P1), in particular page 14 of the paper book wherein, in the Action Taken Report section, it is mentioned that the victim, namely, Jasandeep Kaur came present to the Police Station. It is submitted that it is wholly unclear and ambiguous as to how the victim of her own came to be present in the police station. In this regard, reference may be made to averments made in Para B of the status report dated 04.03.2024 filed by way of affidavit of Gurpreet Singh Bhullar, IPS, Commissioner of Police, Amritsar, wherein it is mentioned that *"....On getting aware of the complaint dated 05.12.2023, the prosecutrix JXXX accompanied by Baba Major Singh and others came from Manga Sarai Gurudwara Nishane Khalsa, Bus Stand Daduana, Mehta Road, Amritsar to Police Post, Galiara..."*.

4. Ld. Counsel further submits that it is very shocking that even thereafter, instead of handing over custody of the victim to the petitioner who is her mother, the victim was sent to Nari Niketan. Even no medical examination of the victim was conducted and there is no MLR on record. Furthermore, despite the seriousness of the allegations against the accused, they are roaming scot free. Even no summons have been served upon the accused-respondents. It is contended that from this it is evident that there is a conspiracy amongst the respondents. Learned counsel further contends that statement of the victim under Section 164 Cr.P.C. cannot be relied upon as the petitioner was not present at the time when the same was recorded. It is accordingly, prayed that present petition be allowed.

5. Per contra, learned State Counsel on instructions from ASI Baljeet Singh submits that upon investigation, the victim girl was recovered from the Dera, whereupon she was produced before the Magistrate. The victim in her statement under Section 164 Cr.P.C. (Annexure R2/T) recorded before the concerned Magistrate has stated as under:-

“Stated that my mother Bhupinder Kaur while separating from my father lives with some other person. They have no permanent address. They live in a rented house and force me to live with them. When my mother had separated from my father three years ago then she had brought me with her and we started living at Gurudwara Nishane Khalsa, bus stop Daduana. Thereafter I and my sister Kirandeep Kaur kept on living with our mother, but my mother solemnized marriage of my sister Kirandeep Kaur with some person without her

consent before attaining the age of 18 years. She wants to do the same with me and says that the person with whom she is living after leaving the house, shall perform my marriage with his elder son. I told my mother that I am not perform marriage and want to study, but she kept on forcing me. On 12.11.2023 my mother had taken me from gurudwara Nishane Khalsa along with her to some village. While taking there also, she started me forcing to solemnize marriage, but I ran away while finding opportunity. On 13.11.2023, I spent one day at one gurudwara at Amritsar and on 14.11.2023, I reached back at Dera Nishane Khalsa, bus stop Daduana. Thereafter my mother kept on searching me and when I was not found then she got registered one false FIR at the police station. The person against whom the FIR has been got registered, I do not know him. I do not want to state anything more.”

6. Ld. State counsel further informs that the said statement of the victim u/s 164 Cr.P.C., was recorded in the presence of her father. As regards medical examination of the victim, learned State Counsel submits that the victim had refused to undergo medical examination.

7. Learned State Counsel further informs that it has been alleged in the present FIR that the victim girl was kidnapped by accused/respondents No.5 to 7 herein from Harmandar Sahib, Amritsar and taken to Dera of Major Singh, resident of Daduana. In this regard, learned Counsel refers to the averments made in para J of the status report dated 04.03.2024 filed by way of affidavit of Gurpreet Singh Bhullar, IPS, Commissioner of Police, Amritsar, which is reproduced hereinbelow:-

“J. Based upon the aforementioned facts, which have so far come on record during the course of investigation of the aforesaid case FIR No. 137/2023 (supra), as per statement

under Section 164 Cr.P.C. of the prosecutrix as well as call details record of mobile phone number of the present petitioner Bhupinder Kaur and aforesaid persons namely Arshdeep Singh, Jaspreet Singh @ Jas and Baba Major Singh, the allegations levelled in the aforesaid case FIR No. 137/2023 (supra) by the present petitioner with regard to kidnapping of her daughter-prosecutrix and committing rape with her by the aforesaid persons Jaspreet Singh @Jas, Arshdeep Singh and Baba Major Singh are not substantiated. As per call details record of mobile phone number 87993-70332 of the present petitioner Bhupinder Kaur and mobile number 62808-91288 of Baba Major Singh, mobile number 90560-70684 of Arshdeep Singh and mobile number 78371-50354 of Jaspreet Singh, the tower locations of these mobile phone numbers were not found at Sri Darbar Sahib, Amritsar on the day of the alleged occurrence i.e. on 21.10.2023. The prosecutrix vide her statement under Section 164 Cr.P.C. recorded before the learned JMIC, Amritsar has not levelled any allegation against the aforesaid persons Jaspreet Singh Jas, Arshdeep Singh and Baba Major Singh or any other person with regard to kidnapping her, confining her in illegal confinement or committing rape with her. Therefore, final report (cancellation) under Section 173 (2) Cr.P.C. was prepared in this case FIR No. 137/2023 (supra) by SHO P.S. E-Division, Amritsar and a report to this effect has been submitted through the Additional Deputy Commissioner of Police, City-1, Amritsar to this office seeking approval thereof. The legal opinion was sought thereupon from the District Attorney (Legal), Amritsar who has raised some objections. Hence, Ms. Darpan Ahuiwalia, IPS, Additional Deputy Commissioner of Police, City-1, Amritsar has been directed to furnish her fresh report in this respect.”

8. Learned State Counsel submits that from the above it is evident that as per the CCTV footage of the area as also as per the Call

Detail Record of the accused/respondents, they were not found near Darbar Sahib at the alleged time of occurrence. It is stated that upon recovery, the girl was taken to Nari Niketan as she had refused to stay with her mother as is evident from her statement under Section 164 Cr.P.C. which was recorded in the presence of the father of the girl. Learned State Counsel informs that subsequently on a request made by the petitioner, she was even allowed to meet the victim. It is stated that cancellation report is yet to be filed in the matter.

9. Learned counsel for the petitioner is unable to dispute or controvert the above said submissions made by learned State Counsel. Even no replication has been filed to the Status Report dated 04.03.2024 filed by the State.

10. In view of the above, no further directions are required to be issued in the matter. Present petition accordingly, stands **disposed of**.

11. Pending application(s) if any also stand(s) disposed of.

22.04.2024

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No