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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 136/2024**

MOHSIN GULAB ALI

.....Petitioner

Through: Mr. Mehmood, Mr. Sanawar Chaudhary, Mr. Jatin Bhatt, Mr. Kshitij Singh and Mr. Shameem Chaudhary, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Anil Soni, CGSC with Mr. Devvrat Yadav, Advocate for UOI/ SAI.
Mr. Yasir Rauf Ansari, ASC with Mr. Alok Sharma, Vasu Agarwal and MR. Atul Sharma, for the State.
SI Satyam Pandey, PS – Lodhi Colony.
Mr. Prasanta Varma, SPP with Ms. Prativa Rani Varma, Ms. Pragya Verma, Mr. Rakesh Kumar Palo, Mr. Rajesh Palo and Mr. Mayank Kumar Verma, Advocates for respondent No. 10/ CBI.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

08.08.2024

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1. By way of the present petition, the petitioner essentially seeks investigation into the allegations that his career as a Judo player was sabotaged by some unknown persons by spiking his food.



2. The learned counsel for the petitioner submits that the petitioner is a Judo player of international repute and has represented the country at various events. He submits that the dope test was conducted in the month of May, 2023 which returned a positive finding for a banned substance. He submits that the petitioner has no history of consuming any banned substance and all his tests conducted on earlier occasions, were negative.
3. He submits that the petitioner was attending a camp at that point in time when the test was conducted, had no reason to consume any substance at that stage. He submits that the findings were contested before the Anti Doping Disciplinary Panel. However, they concluded by saying that since the complaint had already been filed, they cannot go into the investigative part of the allegations. The Panel also showed their inability to investigate into the allegations made by the petitioner.
4. The learned Standing Counsel for the State submits that the status report has been filed by the Delhi Police. The same is taken on record.
5. It is stated that the inquiry was initiated and the report was requested from the National Anti Doping Agency (**NADA**).
6. The report from the NADA indicates the presence of dope in the samples taken from the petitioner. The petitioner has been sanctioned with an ineligibility to participate for four years.
7. Serious allegations have been made by the petitioner alleging that some unknown persons conspired and mixed something in his food which led to the petitioner's sample turning positive for dope.
8. This Court, however, cannot lose sight of the fact that the petitioner has an efficacious remedy of raising his grievance by filing an application under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023('BNSS').



The Hon'ble Apex Court in *M. Subramaniam and Another v. S. Janaki and Another* : (2020) 16 SCC 728 in a challenge to the order of the Hon'ble High Court whereby the Hon'ble High Court had directed registration of FIR, had set aside the directions for registration of the FIR. The Hon'ble Apex Court relied upon the earlier judgments passed by the Hon'ble Apex Court and held that Section 156(3) of the Code of Criminal Procedure, 1973 (Section 175 BNSS) is wide enough to include all such powers of a Magistrate which are necessary for ensuring proper investigation and it includes the power to order registration of FIR. The Magistrate is also empowered to order proper investigation if he is satisfied that the same has not been carried out. It was held that the right course would be for the aggrieved persons to approach the learned Magistrate first and the Hon'ble High Courts ought not to entertain such petitions for the registration of FIR, else they would be flooded with such petitions.

9. The learned counsel for the petitioner also submits that the petitioner is seeking the investigation to be carried out by the Central Bureau of Investigation. The remedy, therefore, lies in filing a petition under Article 226 of the Constitution of India.

10. It is not disputed that allegations are of serious nature, the same however, in the opinion of this Court, can be carried out by the Delhi Police. If the petitioner, at any stage, is not satisfied with the investigation being carried out by the Delhi Police, the remedy is always available to approach this Court or the learned Magistrate for appropriate orders.

11. In view of the above, this Court does not consider it apposite to entertain the present petition.

12. The petitioner is at liberty to approach the learned Trial Court by filing



an appropriate application.

13. It is directed that as and when any such application is filed, the learned Trial Court shall pass an order expeditiously.

14. The petition is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 08, 2024

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