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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 272/2024 & CRL.M.A. 2459/2024

AFROZ

..... Petitioner

Through: Mr.Ashish Dutta, Mr.Mayank,
Ms.Meenal Jain, Advs.

versus

STATE NCT OF DELHI & ORS.

..... Respondents

Through: Mr.Sanjay Lao, SC (Crl),
Mr.Priyam Agarwal,
Mr.Shivesh Kaushik,
Mr.Abhimanv Kr. Arya, Advs.
with SI Jainind Kumar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

17.05.2024

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1. This petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short, Cr.P.C.'), praying for the following relief:

“a. Issue the writ of Mandamus or any other appropriate writ, order or direction to expedite the investigation and file the chargesheet in case FIR No. 0241 of 2022 dated 02.06.2022 registered under sections 324/34 of the Indian Penal Code, 1860 at Police Station Jamia Nagar, New Delhi in a fair Manner.”

2. The present petition has been filed alleging that:-

(a) on 01.06.2022, a physical altercation took place between the petitioner and the respondent Nos.2 and 3, wherein the petitioner and his sister were intentionally hit by the



- respondent nos.2 and 3 with some sharp objects.
- (b) Though the petitioner had suffered physical injuries which would show an offence under Section 307 of the Indian Penal Code, 1860 (in short, 'IPC') having been committed by the respondent nos.2 and 3, however, on the complaint of the petitioner, FIR No.0241/2022 was registered at Police Station: Jamia Nagar for offence only under Sections 324/34 of the IPC.
- (c) On the other hand, FIR No.0324/2022, was, however, registered on the complaint of the respondent no.2 herein at the same Police Station, making the petitioner as an accused for offence under Section 307 of the IPC.
- (d) By an order dated 26.06.2023, the learned Metropolitan Magistrate-08, (South-East District), Saket Courts, New Delhi (hereinafter referred to as the 'Trial Court') in Criminal Case 735/2022, titled as ***State v. Sabir***, arising out of the FIR No.0241/2022 referred hereinabove, observed that there are serious doubts on the fairness of the investigation, and the DCP was directed to monitor the same.
- (e) A new Investigating Officer (in short, 'IO') was also appointed.
- (f) On 16.10.2023, the learned Trial Court directed the SHO of the Police Station: Jamia Nagar to appoint another IO to investigate the case.
- (g) By a subsequent order dated 29.11.2023, the SHO of the



Police Station was directed to coordinate with the learned counsel for the petitioner and supply the copy of the supplementary charge-sheet to the petitioner on or before the next date of hearing.

3. The petitioner has filed the present petition for the above quoted prayers, contending that proper investigation is not being carried out by the police in order to help the accused.

4. On notice being issued, the Status Report dated 16.05.2024 has been filed by the respondent no.1 *inter alia* stating that on 28.08.2023, a supplementary charge-sheet was filed before the learned Trial Court and copy of the supplementary charge-sheet has been duly supplied to the petitioner as well.

5. The learned counsel for the petitioner, however, drawing reference of this court to the photographs annexed with this petition as Annexure-P/7 (Colly), submits that a bare look at the injuries as are visible in the photographs annexed, would clearly show that offence under Section 307 of the IPC had been committed by the respondent nos.2 and 3. He submits that the charges are being intentionally diluted so as to favour the accused persons.

6. In my view, these objections are to be taken and dealt with by the learned Trial Court when the charge-sheet had been filed.

7. In ***Brinda Karat v. State (NCT of Delhi)***, (2022) SCC OnLine Del 1775, a Co-ordinate Bench of this court, relying on the various precedents of the Supreme Court as well as of the High Courts on the limitations on the writ jurisdiction, has held as under:-



“104. Recently, while deciding the case of Kotak Mahindra Bank Ltd. v. Dilip Bhosale, 2022 SCC OnLine SC 847, the Supreme Court reiterated that when a remedy under the statute is available, filing of a writ petition under Article 226 of the Constitution is to be discouraged by the High Court. It was held as under:

“Before parting with the order, we would like to observe that this Court is consistent of the view and can be noticed from the judgment in United Bank of India v. Satyawati Tandon, (2010) 8 SCC 110, that when a remedy under the statute is available and in the instant case which indeed was availed by the respondent/borrower, filing of a writ petition under Article 226 of the Constitution is to be discouraged by the High Court.”

105. The principle that emerges from the aforementioned judgments is that the extraordinary writ jurisdiction is to be exercised only in rare cases or certain contingencies in the interest of justice, including the exceptional cases delineated above.

106. Thus, a writ to compel the police to conduct an investigation or lodge an FIR can be denied for not exhausting the alternative and efficacious remedy available under the provisions of the Code, unless the exceptions enumerated in the decision of the Supreme Court in the aforementioned judgment are satisfied. In the instant case, the petitioner is yet to exercise and exhaust his alternative remedies available under the provisions of the Code including challenging the impugned order of the Magistrate.

107. In light of the aforesaid, it is settled law that the power to issue writ has its own well-defined limitations imposed by the High



Courts, one of which is the availability of alternative efficacious remedy. Considering the law laid down by the judicial precedents, the procedure laid down by the Code of Criminal Procedure and as well as the fact that alternate and efficacious remedy is available to the petitioner which is yet to be exhausted, this Court is also of the opinion that the High Court should not ordinarily, as a matter of routine, exercise its extraordinary writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available.

108. Before applying the jurisprudence delineated above to the facts of the instant case, it is pertinent to take note of a worrying phenomenon that has gained traction and is in vogue these days is of bypassing the procedure under the Code. The beauty of procedural law lies in the stages and remedies available during the course of a criminal proceeding. The High Courts have been flooded with writ petitions praying for registration of FIRs or praying for a proper investigation. If the High Courts entertain such writ petitions, it will open pandora's box and would crumble the already overtaxed system. Therefore, the alternate remedies wherever available must be exhausted, save in exceptional circumstances where the urgent intervention of this Court is required in the interest of justice, before approaching this Court.”

(emphasis supplied)

8. In view of the above judgement and considering the facts and circumstances of the present case, it is observed that the petitioner has an alternative efficacious remedy for the relief sought, and for the said reason, this Court does not deem it appropriate to exercise its extraordinary jurisdiction under Article 226 of the Constitution of



India or its inherent power under Section 482 of the Cr.P.C.

9. The petition is accordingly dismissed, leaving all contentions of the petitioner open to be contended before the learned Trial Court in accordance with the law.

NAVIN CHAWLA, J

MAY 17, 2024/Arya/ss

[Click here to check corrigendum, if any](#)