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

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CRM-M-60104-2024 (O&M)

Date of decision : 25.03.2025

Ali Ahmad**...Petitioner****Versus****State of Haryana and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Deepak Verma, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for issuance of direction to respondents No. 2 and 3 for initiating appropriate legal action by registering an FIR against the accused persons, who had allegedly committed murder of the son of the petitioner, namely Moh. Tajim and also for transferring the investigation of the case to some other independent investigating agency.

2. The petitioner is alleging that his son Moh. Tajim had been killed by Rayam, Hatim and Mohd. Alamgir on 24.10.2024 in pursuance of a conspiracy hatched by them. However, the police has not been taking action on the complaint(s) of the petitioner. The petitioner has also submitted that even Alamgir has given a complaint on 30.10.2024 stating therein that accused Hatim, Ryana and their friends had killed son of the petitioner on 24.10.2024 but still, the police is not taking appropriate action against the

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culprits. Rather, the police is trying to help the accused persons and trying to declare the death of the son of petitioner as accidental one.

3. A detailed status report has been filed on 17.01.2025. Today, supplementary status report has been filed on behalf of the respondent-State. It is submitted therein and learned Senior Deputy Advocate General, Punjab has argued the petitioners had filed a complaint on 25.10.2024, on which, a detailed inquiry has been conducted by the police. The suspected persons and other respectable of the society were joined into the inquiry and their statements were recorded. In inquiry, no incriminating evidence came against the suspected persons and it has been found that the son of the petitioner had died an accidental death. The statement of aforesaid Alamgir has also been recorded, wherein he voluntarily submitted that he had given complaint dated 30.10.2024 under the influence of the present petitioner. Thereafter, the petitioner has submitted another complaint on 04.11.2024, expressing his suspicion that his son had been murdered. Although, it was found in earlier inquiry that the son had died an accidental death, still on the suspicion of the petitioner, an FIR bearing No. 12 dated 05.01.2025 has been registered under Sections 103(1) and 3(5) of Bharatiya Nyaya Sanhita, 2023 at the concerned police station and the investigation is being carried out. It is further submitted that a fair and impartial inquiry/investigation pre and post registration of the FIR has been conducted in this matter. The allegations levelled by the petitioner against the police officials are patently wrong and baseless.

4. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

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5. A perusal of the material placed on record including both the status reports, it is apparent that a detailed and thorough inquiry has been conducted into the allegations made by the petitioner. More so, now the aforesaid FIR has been registered and the investigation is being conducted in a proper manner. There is nothing on record to either disbelieve the fairness, honesty and integrity of the police officials or to hold that the investigation should be transferred to some other investigating agency. In this scenario, any order, writ or direction to the Investigating Agency at this juncture of investigation is not proper. It amounts to unnecessary and illegal interference. The Apex Court in a number of decisions has clearly laid down that the Court should not interfere in investigation. Reliance can be placed upon the authority cited as *State of A.P. v. Golconda Linga Swamy (2004) 6 SCC 522*, wherein Hon'ble Supreme Court, while considering the decisions of that Court rendered in the cases of *R.P. Kapur v. State of Punjab AIR 1960 Supreme Court 866* and *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335* and other decisions on the exercise of inherent powers by the High Court under Section 482 of Cr.P.C. (*which is pari materia with Section 528 of BNSS*), has observed that it is important to bear in mind, the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.

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Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. The powers possessed by the High Court under Section 482 of Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. It was also held that the High Court being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Reliance in this regard can also be placed upon ***Janata Dal v. H.S. Chowdhary : (1992) 4 SCC 305*** and ***Raghubir Saran (Dr.) v. State of Bihar AIR 1964 Supreme Court 1.***

6. On applying the ratio of law as laid down in the aforecited judgments, it is apparent that this Court should refrain from interfering in the matter as it is still under investigation. At the cost of repetition, it may be stated that the investigating agency had conducted a thorough inquiry in the matter and now an FIR has been registered, investigation of which is still pending. This Court cannot appreciate the allegations or evidence at this stage while deciding a petition filed under Section 528 of BNSS as it is not a case

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where the statutory provisions can be stated to have been violated. Even otherwise, the petitioner has ample remedy available in law if he thinks that the police has wrongly exonerated any accused or has not invoked any specific provision of law against the accused persons. In view of the discussion as made above, finding no merit in the present petition, the same is dismissed. The Investigating Agency may proceed further with the investigation in accordance with law.

25.03.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

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