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

+ **W.P.(CRL) 592/2025**

XXXXXXX

.....Petitioner

Through: Mr. S. G. Goswami, Advocate

versus

THE STATE GOVT. OF NCT OF DELHI AND ORS.

.....Respondents

Through: Mr. Yasir Rauf Ansari, ASC with Mr.
Alok Sharma and Mr Vasu Agarwal
for the State

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
19.02.2025

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1. The present writ petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking directions for transfer of investigation to an independent agency, legal action against the SHO of Police Station - Dayalpur, and inclusion of additional sections under Bharatiya Nyaya Sanhita, 2023 (hereinafter "BNS"), and Protection of Children from Sexual Offences Act, 2012 (hereinafter "POCSO") in the pending FIR bearing no. 396/2024, registered against the respondent nos. 4 to 7, for the offences punishable under Section 137(2) of the BNS.

2. The brief facts that led to the filing of the instant petition are as follows:

a. The present writ petition arises from FIR no. 396/2024 registered at



Police Station - Dayalpur, Delhi on 1st July, 2024, based on a complaint lodged by the father of the victim/petitioner. The complainant alleged that his minor daughter had gone missing from their residence in North East Delhi on the same day and pursuant to the same, the police initiated an investigation and registered a case under Section 137(2) of the BNS.

- b. Subsequently, the victim was traced and recovered on 6th July, 2024, following which her medical examination was conducted. However, in the course of her examination, the victim refused to undergo an internal medical examination and explicitly stated in her MLC that she did not wish to pursue legal action. Subsequently, her first statement under Section 183 of the BNSS [earlier Section 164 of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”)] was recorded on 11th July, 2024, in which she did not make any allegations of sexual assault or coercion.
- c. A second statement of the victim was recorded on 31st July, 2024, wherein, she reiterated her earlier stance and did not allege sexual assault or harassment. She, however, disclosed that she had been married to the accused, Raabil, in court with the assistance of the other co-accused, namely, Irshad, Imran and Ilyas.
- d. Thereafter, the victim’s third statement was recorded before the learned Magistrate, in which, for the first time, she alleged that Raabil and Irshad had sexually assaulted her. She also alleged that Ilyas had facilitated a fraudulent marriage between her and Raabil, and *lastly*, that all the accused had threatened to kill her and her family. Based on this statement, the investigating agency invoked Sections 64,



64(2)(m), 75 of the BNS and Section 6 and 8 of the POCSO Act.

- e. The police undertook further investigation and verified victim's date of birth from her school records confirming that she was born on 18th April, 2007, thereby, indicating that she was a minor at the time of the incident. The police also bound down the accused persons Irshad, Imran and Ilyas.
- f. Multiple raids were conducted to apprehend the accused Raabil, who remained untraceable for a long time. Eventually, the accused Raabil was granted interim protection by the Court concerned vide order dated 5th November, 2024 and was directed to join the investigation.
- g. On 12th November, 2024, the victim's younger brother was allegedly threatened by the accused Raabil and his relative, Shahzad, who purportedly warned him to instruct his sister (the victim) to withdraw the case, failing which their entire family would be killed.
- h. Upon receiving this complaint, the police initiated an inquiry. During this inquiry, call data records of the accused Raabil were obtained to ascertain his location on 12th November, 2024. Employment records from IVC Logistics confirmed that Raabil was at his workplace at the relevant time, thus, contradicting the claim that he was present at the location where the threat was allegedly issued.
- i. The police also examined CCTV footage from a private shop near the location, but the visuals were inconclusive in establishing any direct evidence of the accused's presence.
- j. The petitioner, dissatisfied with the progress of the investigation, has filed the present writ petition alleging bias and inaction on the part of the investigating agency.



3. Learned counsel appearing on behalf of the petitioner submits that the acts of commission and omission on the part of the respondents, particularly the investigating agency have resulted in the curtailment of the petitioner's personal liberty. It is further submitted that the failure to conduct a fair and expeditious investigation, coupled with the alleged inaction in apprehending the accused and addressing the threats to the victim's family, amounts to a violation of the petitioner's fundamental rights.

4. It is submitted that the respondents have remained in constant communication with each other through various phone numbers between 1st July, 2024 and 6th July, 2024, indicating a coordinated effort to evade investigation and manipulate the proceedings. It is also submitted that respondent no. 4's movements and actions were well within the knowledge of the other respondents, suggesting a deliberate conspiracy to shield him from legal consequences. It is further submitted that despite such *prima facie* evidence of collusion, the investigating agency has failed to take stringent action.

5. It is submitted that the investigating officer initially sought issuance of Non-Bailable Warrants against respondent no. 4 before the learned Trial Court, however, the investigating officer subsequently withdrew the application without any justifiable reason. It is also submitted that instead of pursuing coercive measures to ensure the accused's presence, the investigating officer merely directed respondent no. 4 to join the investigation, thereby, extending undue leniency to him. It is further submitted that this conduct of the investigation agency reflects a lack of seriousness in the investigation and bias in favor of the accused persons.

6. It is submitted that despite serious allegations against the accused



persons, the Investigating Officer merely “bound them down” after they joined the investigation instead of taking stringent action against them. It is further submitted that respondent no. 4 subsequently sought anticipatory bail before the learned Trial Court, which was dismissed, thereby affirming the gravity of the allegations against him. However, the Investigating Officer’s failure to secure his custody reflects a lack of diligence.

7. It is submitted that respondent no. 4, along with his associate, threatened the victim’s minor brother, warning him to compel his sister (the victim) to withdraw the case, failing which he and his entire family would be killed. It is contended that a formal complaint regarding this serious act of intimidation was filed by the victim’s mother, yet the investigating agency has failed to take any decisive action against the accused for criminal intimidation and witness tampering.

8. It is submitted that the conduct of the investigating officer and the SHO has been blatantly prejudicial to the fair investigation of the present case. It is specifically alleged that the SHO told the petitioner’s parents, “*tumhara case gadde me daal dunga*” (I will bury your case), thereby, exhibiting an intent to suppress the investigation and shield the accused. Such a statement not only reflects a lack of impartiality but also raises serious concerns about the integrity of the ongoing investigation.

9. In view of the aforesaid submissions, it is prayed that the present petition may be allowed and the reliefs be granted as prayed for.

10. *Per Contra*, Mr. Ansari, learned ASC appearing on behalf of the State vehemently opposed the present petition submitting to the effect that the same is devoid of merit and is an attempt to interfere with due process of law.



11. It is submitted that the investigation has been conducted fairly and in accordance with the law, and there is no material on record to suggest that the petitioner's personal liberty has been curtailed. It is further submitted that the contention of the petitioner that the investigation has not been conducted in a fair and expeditious manner is unfounded and devoid of merit. Further, mere dissatisfaction with the pace or direction of an investigation cannot form the basis for interference by this Court.

12. It is submitted that the allegations regarding constant communication between the respondents and a supposed conspiracy to evade investigation are vague, unsubstantiated and speculative in nature. There is no concrete evidence on record demonstrating collusion or an attempt to manipulate proceedings.

13. It is submitted that a mere withdrawal of an application for issuance of Non-Bailable Warrants by the investigating officer does not indicate any *mala fide* intent or undue leniency towards the accused persons. It is further submitted that respondent no. 4 was directed to join the investigation, and he has duly cooperated with the proceedings. Moreover, the police have acted in accordance with the procedural norms.

14. It is submitted that the allegations regarding threats to the victim's minor brother and preliminary inquiries have not corroborated the claims made by the petitioner. It is also submitted that the CDR analysis places respondent no. 4 at his workplace in Manesar, Gurgaon at the relevant time, thereby, casting doubt on the veracity of the petitioner's claim.

15. It is submitted that the allegations made against the SHO concerned, regarding purported statements of bias and threats, are unsubstantiated. There is no independent corroboration supporting the claim that the said



SHO made the alleged statement. It is further submitted that disciplinary actions against the investigating officer cannot be sought in a writ petition unless a clear and compelling case of abuse of power is made out, which the petitioner has failed to do so.

16. In view of the above submissions, it is submitted that the present petition may be dismissed being devoid of any merit.

17. Heard learned counsel appearing on behalf of the parties and perused the material available on record.

18. Before delving into the merits of the petitioner's plea for intervention in the ongoing investigation, it is imperative to examine the scope and limitations of the High Court's jurisdiction to interfere with police investigations. The petitioner has sought the transfer of investigation to an independent agency and directions for further action against the accused, alleging inaction and bias on the part of the investigating agency.

19. It is well-established that the investigation process is primarily the domain of the police, and courts must exercise restraint while intervening in such matters. The Hon'ble Supreme Court in ***D. Venkatasubramaniam & Ors. v. M.K. Mohan Krishnamachari & Anr.*** (2009) 10 SCC 488 has discussed about the tendency of the High Courts to interfere with the investigation of the police authorities and observed that interference should only be made to secure the ends of justice. The relevant portion of the said judgment is reproduced as under:

*“This Court, on more than one occasion, decried uncalled for interference by the Courts into domain of investigation of crimes by police in discharge of their statutory functions. The principle has been succinctly stated way back in **Emperor V. Khwaja Nazir Ahmad** AIR 1945 PC 18 and the same has been*



repeatedly quoted with respect and approval. The Privy Council observed that “just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly, acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry”

20. This principle has been reiterated by the Hon’ble Supreme Court on multiple occasions, reinforcing that courts should not interfere with investigations unless exceptional circumstances warrant such interference.

21. In the present case, the records indicate that the police have taken significant steps in furtherance of the investigation such as recording multiple statements of the victim under Section 183 of the BNSS, verifying call data records and employment details to ascertain *alibi* claims, and conducting medical and potency tests of the accused persons.

22. The petitioner has sought transfer of the investigation to an independent agency, alleging bias, inaction and failure to take stringent measures against the accused persons. However, the legal standard for transferring an investigation is stringent and well-defined by the Hon’ble Supreme Court. In ***Arnab Ranjan Goswami v. Union of India* (2020) 14 SCC 12** it was reiterated that:

“42. The transfer of an investigation to CBI is not a matter of routine. The precedents of this Court emphasise that this is an “extraordinary power” to be used “sparingly” and “in exceptional circumstances”. Speaking for a Constitution Bench in State of W.B. v. Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] (“CPDR, West Bengal”), D.K. Jain, J. observed : (SCC p.



602, para 70)

“70. ... despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

43. *This principle has been reiterated in K.V. Rajendran v. CBCID [K.V. Rajendran v. CBCID, (2013) 12 SCC 480 : (2014) 4 SCC (Cri) 578] . Dr B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held : (SCC p. 485, para 13)*

“13. ... This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or



where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.”

23. In the present case, the petitioner has failed to establish such rare and exceptional circumstances that would warrant investigation. As discussed earlier, the Police have taken significant steps in furtherance of the investigation.

24. The mere dissatisfaction of the petitioner with the progress of the investigation is not a sufficient ground to warrant a transfer to an independent agency. The Hon’ble Supreme Court has cautioned that such transfers should not be directed merely because allegations have been made against the local police. In the absence of any material to indicate collusion, bias or deliberate suppression of evidence by the investigating officer, this Court finds no reason to interfere with the ongoing investigation.

25. Considering the absence of any material to indicate bias, collusion or failure of the State police to conduct a fair investigation, this Court finds no justification for transferring the investigation to an independent agency. This Court is of the view that the petitioner has failed to demonstrate any exceptional circumstances warranting transfer of investigation to an independent agency.

26. It is observed that the investigating officer has exercised discretion in withdrawing the application of issuance of Non-Bailable Warrants and instead ensured that the accused persons joined the investigation. No cogent evidence has been placed on record to suggest that the investigating agency



is acting under extraneous influence or is shielding the accused.

27. Moreover, the petitioner has an alternative remedy under Section 193 (9) of the BNSS before the learned Magistrate for reinvestigation and at this stage, the interference in the investigation by this Court would be uncalled for.

28. The prayer for transfer of investigation is accordingly rejected.

29. Moving further, the petitioner has alleged that the SHO concerned exhibited bias and misconduct in handling the investigation. The primary allegation is that the SHO told the victim's parents, "*Tumhara case gadde me daal dunga*" (I will bury your case), thereby, displaying an intent to suppress the investigation and shield the accused.

30. However, the petitioner has failed to provide any independent or corroborative evidence to substantiate this claim. The alleged statement of the SHO is based solely on the assertions of the petitioner and her family, with no supporting witness statements, official complaints, or evidence to validate the claim. Mere allegations, without any tangible proof, cannot form the basis of judicial intervention.

31. The investigation already undertaken by the Police contradict the petitioner's assertion that the SHO is deliberately suppressing the case. In the absence of substantial evidence proving bias, collusion, or dereliction of duty on the part of the SHO, this Court finds no reason to interfere in the matter or take any action against the investigating officer.

32. The allegations against the SHO remain unsubstantiated and appear to be based on mere apprehensions rather than concrete proof. The petitioner has neither approached the superior police authorities nor provided any independent evidence to validate the claims of bias or misconduct.



Consequently, the prayer for action against the SHO is rejected.

33. The mere dissatisfaction of the petitioner with the manner of investigation is not valid ground for judicial interference. The Hon'ble Supreme Court has consistently held that the High Court should exercise its power under Article 226 of the Constitution sparingly and only in rare and exceptional circumstances where justice demands it.

34. In the present case, there is no material to indicate bias, *mala fide* intent or collusion on the part of the investigating agency. Also, the allegations against the SHO remain unsubstantiated and there is no concrete evidence to support claim of bias or misconduct.

35. In light of the foregoing discussion, this Court finds no merit in the present petition. It is held that the petitioner has failed to establish any exceptional circumstances warranting judicial interference in the ongoing investigation or necessitate the transfer of the case to an independent agency.

36. Accordingly, the instant petition stands dismissed along with the pending application(s), if any.

37. The investigating agency shall continue to conduct the investigation diligently and in accordance with the law.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 19, 2025

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Click here to check corrigendum, if any