

(2020) 08 DEL CK 0054

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1516 Of 2020

Anil Kumar

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 308, 323, 341, 354, 354A, 354B, 376, 376D, 506, 509

Code Of Criminal Procedure, 1973 — Section 36, 154(3), 156(3), 161, 164, 173, 200, 437, 439, 482

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3
Arms Act, 1959 — Section 25, 27, 54, 59

Citation : (2020) 08 DEL CK 0054

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Samrat Nigam, Amit Chadha

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, petitioner has prayed as under:-

i. Summon the Detail Action Taken Report and Status Report of the case FIR no. 78/2020, U/s 376(D)/ 354/354-A/341/323/34 IPC & 3 of

SC/ST Act immediately;

ii. Summon the copies of Roznamcha-B (Daily Dairy Register (of Police Station Shalimar Bagh, Delhi from 25.02.2020 to 10.03.2020 and

to preserve the same for further reference;

iii. Summon the Public Facilitation Desk Register (Public Help Register) Dairy Dispatch Register of Police Station Shalimar Bagh, Delhi

from 25.02.2020 to 10.03.2020 and preserve the same for further reference;

iv. Summon the Entire Case Diary of Case FIR No. 0078/2020, under Section

376(D)/354/354-A/341/323/34 IPC & 3 of SC/ST Act,

Police Station Shalimar Bagh which is now being investigated by IO/ACP Sanjay Kumar Sharma, DIU/NW/PS-Maurya Enclave, Delhi

and pass the directions to attest the same along with pagination by the Honâ??ble Court concerned;

v. Pass the directions to the IO/ACP to preserve all the CCTV Footage of all cameras installed at Police Station-Shalimar Bagh, Delhi

from 7 am of 04.03.2020 to 6 pm of 24.03.2020 and CCTV Footage of all the cameras installed BJRM, Hospital Jahangir Puri, Delhi of

03.03.2020 and if same have been destroyed then the same must be retrieved and same be preserved for further reference;

vi. Pass the directions to the IO/ACP to collect Call Detail Record and their locations from 25.02.2020 to 30.02.2020 of SHO/Inspector

Rajinder Singh (Mob. No. 8750870226 & all other phone numbers being used by him), ACP Krishan Gopal Tyagi (Mob. No. 8750870206

& all other phone numbers being used by him), SI Pradeep (Mob. No. 9718445544, 7015651591& all other phone numbers being used by

him) P.S. Shalimar Bagh, SI Suresh Pal (Mob. No. 9810278183 & all other phone numbers being used by him), P.S. Shalimar Bagh,

Delhi, ASI Shiv Hari (9968890145 & all the phone numbers being used by him), P.S. Shalimar Bagh, Manisha (Mob. No. 9540752224 &

all other phone numbers being used by her) wife of Lt. Shri Deepak Kumar resident of H. No. 206, New-Police Colony, Near Kela

Godawn, Shalimar Bagh, Delhi-88, Inspector Ramakant Mishra and his wife Rajini (Mob. No. 9953840606 & all other phone numbers

being used by them), H. No. 206, New-Police Colony, Near Kela Godawn, Shalimar Bagh, Delhi-88 and all the phone numbers of

accused persons of FIR No. 78/2020, U/s 376(D)/354-A/341/323/34 IPC & 3 of SC/ST Act, P.S. Shalimar Bagh, Delhi and same may be

preserved for further reference; and

vii. Monitor the investigation of present case.

2. It is pertinent to mention here that for the same relief, under section 156(3) Cr.P.C., the petitioner approached the Registry of Rohini Courts,

Delhi, however, due to lockdown, work of Courts below has been suspended, the Registry of said court denied to accept the same. Hence, the

present petition.

3. The brief facts of the case are that the brutal incident is of 03.03.2020 when the petitioner, his wife, two minor school going children and

unmarried young sister-in-law- namely Ms. â??Kâ?? were restrained, threatened to kill and brutally beaten by approximately 10 persons with

dandas, bricks, fist blows, kicks, iron rod, etc. Moreover, caste based derogatory remarks (petitioner being from Scheduled Caste Category)

were passed, clothes of Ms. â??Kâ?? were torn and was fingered etc. Accordingly, calls were made by the petitioner and his sister-in-law at the

100 no. (Police Control Room) and the PCR as well as local police arrived at the spot and had taken the petitioner, his wife, children and sister-in-

law to the BJRM Hospital, Jahangir Puri, Delhi but it was surprised and shock to them that they were restrained in Police Station Shalimar Bagh,

Delhi deliberately and intentionally and misbehaved, threatened and beaten by one ASI Shiv Hari just with the mala fide intention to delay the

MLCs but when the petitioner made another calls at the PCR then only they were taken to the above mentioned Hospital. Meanwhile one friend

and his wife namely Shri Sanjay and Mrs. Kajal also arrived in the police station and the said persons are also the witnesses of this kind of act,

conduct and behaviour of the said police officer and other incidents which happened on the very next day. Afterward, again the said police officer

i.e. ASI Shiv Hari came there and influenced the doctors not to examine them medically. The said police officer again misbehaved with petitioner,

his wife, children and sister-in-law, threatened, abused in filthy language and passed caste based derogatory remarks. Thereafter, the petitioner, his

wife, minor children, sister-in-law were left in the said hospital and further directed them to come to the police station themselves in the e-rickshaw.

Shri Sanjay and his wife Mrs. Kajal also remained present in the hospital at that time.

4. On reaching Police Station, the petitioner made a complaint and handed over the same to the Duty Officer as per the direction of the police

officers. The said complaint was registered as DD No. 64-B, dated 03.03.2020 at 9.30 pm with the said police station and copy of the same was

given to the petitioner and further the petitioner, his wife, children, sister-in-law, friend and his wife were directed to leave the police station with

the assurance to take appropriate legal action. Thereafter, based upon said complaint, FIR No. 78/2020, U/s 323/341/354//354-A/354-B/34

IPC got registered with the Police Station-Shalimar Bagh, Delhi after a lapse of about 6 hours for the reason best known to the police officers

only.

5. Learned counsel appearing on behalf of petitioner submitted that the contents of the FIR clearly falling under the ambit of Section

376(D)/307/308/354A/354/354-B/323/341/506/34 IPC & 3 of SC/ST Act & 25/54/59 Arms Act but the local police in collusion with the

accused persons did not mention the proper sections in the FIR in question deliberately and intentionally. However, even the FIR under sections

341/354/354-A/354-B/34 IPC and 3 of SC/ST Act are concerned, same are non-bailable and cognizable in nature but local police did not arrest

the accused persons rather left them to hatch one after another conspiracy to implicate the petitioner and his family members into the false and

frivolous cases. Accordingly, the local police in connivance of accused persons in a planned manner implicated the petitioner, his wife and minor

child Master Harshit Kumar, a student of 12th class whose exams of board were going on in a false and frivolous case bearing FIR No. 77/2020,

U/s 307/34 IPC, Police Station-Shalimar Bagh, Delhi based upon concocted story just with the intention to help the accused persons so that the

petitioner and his family couldn't pursue his case.

6. It is submitted that the conspiracy hatched by the local police in connivance of accused persons of the present FIR could be gauged through the

very facts as on 04.03.2020, the petitioner, his wife and two minor children namely Master Harshit and Master Mitul were abducted from their

house at about 8 am forcefully and illegally and further detained in the said Police Station till evening and they have been implicated in case FIR

No. 77/2020, under Section-307/34 IPC, P.S. Shalimar Bagh, Delhi. The mala fide intention of the local police could also be gauged as the son of

the petitioner namely Master Harshit was produced before the JJB, Mukherji Nagar, Delhi at about 5 pm so that his bail could not be filed and

his entire career be spoiled as it was well within the knowledge of the local police that his exams of 12th standard were going on. Further, the

petitioner and his wife were produced before the Court of Ms. Supreet Kaur, Ld.

Duty MM at the resident of the said Judge in connection with
FIR No. 0077/2020, U/s 307/34 IPC & 25/27/54/59 Arms Act, Police Station-Shalimar Bagh, Delhi at about 8 pm where their bail application
under Section 437 of Cr.P.C. filed and the Court has been pleased to grant interim bail of one day to the wife to the petitioner with the directions
to appear before the concerned Court at 2 pm on the next day i.e. 05.03.2020, whereas, the petitioner was sent to JC for one day with the
direction to produce him before the Court concerned on the next day only. Accordingly, on 05.03.2020, the wife of the petitioner appeared before
the Court of Shri Virender Singh, Ld. MM, Rohini Courts, Delhi and the petitioner was produced from JC and said Court has been pleased to
grant the regular bail to the wife of the petitioner but the petitioner was sent to JC as his bail application not maintainable because the said Court
was not having power to grant bail under Section 437 of Cr.P.C. to the petitioner.

7. Thereafter, on 06.03.2020 the bail application under Section 439 Cr.P.C. of the petitioner was moved before the Court of District & Session
Court, Rohini Courts, Delhi which came to be listed on 07.03.2020 where the petitioner come to know that the local police in connivance of the
accused persons hatched another conspiracy and got registered another FIR No. 81/2020, under Section-376/354-B/354/323/506/34 IPC &
PS-Shalimar Bagh on 05.03.2020 at 06.50 pm on the same cause of action solely with the purpose and intention to spoil the life and career of the
petitioner and his family members and to keep them under such circumstances so that the petitioner and his family members could not pursue case
FIR No. 78/2020, under Section 354/341/323/34 & 3 of SC & ST Act.

8. Further conspiracy hatched by the local police in connivance of accused persons could further be gauged through the very facts as the said
W/Ct. Manisha (complainant in aforementioned FIR No.81/2020) along with other persons are accused in said FIR No.78/2020 and were to be
arrested immediately but instead arresting the said lady and other accused persons, the local police called her in the police station to implicate the
petitioner and his family member in another case purely based upon false and frivolous facts and circumstances just with the intention to keep the
petitioner and his family members behind the bars so that they could not pursue their case.

9. Learned counsel submitted that when the petitioner was in jail then the case FIR No.77/2020 and 81/2020 were transferred to the DIU/NW,

PS Maurya Enclave and case FIR No.78/2020 was transferred to ACP Vijay Kumar, Model Town, Delhi who did a detail investigation of the

present case and the said IO/ACP also produced the sister-in-law namely Ms.K and wife Ms.Anchal before the courts where their statements

under section 164 Cr.P.C. were recorded and thereafter sections 376(D)/354/354-A/341/323/34 IPC & 3 of SC/ST Act were added.

10. Further submitted that at last the Court of Shri Bhupinder Singh, learned ASJ, Rohini Courts, Delhi has been pleased to grant bail to the

petitioner in case FIR No.77/2020 and 81/2020 and was released from jail. Thereafter, the petitioner made a detail complaint to the various

authorities. The petitioner also made a request to the IO/ACP Vijay Kumar to collect the CCTV footage, CDRs of accused persons and some

police personnel immediately and to preserve the same but said request is still pending at the mercy of the police officers.

11. Learned counsel submitted that to the shock and dismay of the petitioner/ complainant, all of sudden, the investigation of the present case was

transferred by respondent no.3 to IO/ACP Sanjay Kumar Sharma, Maurya Enclave, Delhi without any cause and reason. In fact, the IO/ACP

Sanjay Kumar Sharma is the close friend and relative of the accused persons and SHO/ Inspector Rajinder Singh and ACP Krishan Gopal Tyagi

who in fact would work as a puppet. The only purpose of transferring the investigation of the present case from IO/ACP Ajay Kumar to IO/ACP

Sanjay Kumar Sharma is solely with the intention to give favour to the accused persons. Accordingly, the IO/ACP Sanjay Kumar Sharma has

started to harass and torture the petitioner and other public witnesses on one pretext or other by misusing his powers.

12. Moreover, the collusion of IO/ACP Sanjay Kumar Sharma along with the accused persons could be gauged as just after transferring of the

investigation of the present to the said IO/ACP all the accused persons have come back at their homes and roaming in the society and creating

pressure upon the petitioner and his family members to settle the matter otherwise they must be ready to face the consequences. Thus, the IO/ACP

Sanjay Kumar Sharma is highly biased and conducting unfair investigation in the present case and helping the accused persons by one way or the

other. Hence, the indulgence of this court is very essential at this point of time.

13. On the other hand, learned APP appeared on behalf of the respondents submitted that on the basis of statement of petitioner/complainant Anil

Kumar, the present case vide FIR No. 78/20, u/s 323/341/354A/354B/34 IPC & 3 SC/ST Act was registered at Police Station Shalimar Bagh,

Delhi. In his statement, petitioner stated that on 03.03.2020, two boys namely Ritik @ Mintu and Aman wrongful restrained his wife Anchal and

his son Mitul Kumar and starting throwing water balloons using abusive language. His wife informed his elder son namely Harshit Kumar, who

informed him. He alongwith his son and sister-in-law Kashish reached the spot and found the balloons on the possession of Ritik and Aman. In the

meantime, a group of some women and men came there and surrounded them wrongfully and started beating and threatened them of dire

consequences. Mohit was having stick (danda) and his father namely Jagdev Shukla was having iron rod. A friend of Mohit namely Vaishkh also

reached there and joined the unlawful assembly and started pelting bricks on them. Mohit, his father, Mitul, Aman and Vaishkh pull down his wife

and sister-in-law on road and started molesting her by putting hands on their breast and he also tore their clothes. On instigating, Mohit, his father

and Mintu inserted finger into the vagina of his sister-in-law by calling their cast and threatened to burn her after committing rape. Accordingly, the

present case was registered and investigation was taken up by ACP/Shalimar Bagh.

14. Further submitted that on 03.03.2020 petitioner Anil Kumar as well as other victims namely Anchal, Harshit, Mitul and Ms.â??Kâ?? were

got medically examined from BJRM Hospital Jahangir Puri, Delhi. On 07.03.2020 on the directions of senior officers, the present case was

marked to ACP/Model Town for further investigation. On 11.03.2020, statement of victim Ms.â??Kâ?? u/s 164 Cr.P.C. got recorded and she

re-affirmed as stated in her statement under section 161 Cr.P.C. On the same day, i.e. 11.03.2020 victim Ms.â??Kâ?? was got medically

examined from Baba Saheb Ambedkar Hospital, Rohini, Delhi vide MLC No.2138/20. During her medical examination, she refused to undergo

her internal examination.

15. Thereafter, on 12.03.2020 statement of victim Anchal u/s 164 Cr.P.C. was got

recorded wherein she supported the version of complainant and victim Ms.â??Kâ??. The clothes of victim Ms.â??Kâ?? were taken into police possession and seized. Blood sample of said victim was collected from Baba Saheb Ambedkar Hospital, Sector 6, Rohini, Delhi. Statement of Nisha Khanna was recorded u/s 161 Cr.P.C. and PCR Form were collected.

16. On 16.03.2020 exhibits of the case i.e. clothes and blood sample of victim Ms.â??Kâ?? were got deposited in FSL Rohini Delhi. Result of the same is still awaited. Thereafter, on 19.03.2020 statement of eye-witnesses namely Sunil Sharma and Kirpal Singh Bedi were recorded u/s 161 Cr.P.C. wherein they corroborated the version of complainant. On 20.03.2020 final result on MLC vide No. 184026 in respect of complainant Anil Kumar was obtained. The Doctor opined injury as simple. Final result on MLC No. 184028 in respect of Ms.â??Kâ?? and MLC No.184029 in respect of Anchal, were also obtained and concerned Doctor opined â??Patient did not get gynea examination done. So, no gynea opinion can be submitted.â? CCTV footage from BJRM Hospital of dated 03.03.2020 was obtained. On 07.05.2020 on the directions of senior officers the present case was transferred to DIU/NW for further investigation and the same was marked to ACP Sanjay Sharma.

17. Learned APP further submitted that during investigation in the public colony, independent witnesses were examined and their statement u/s 161 Cr.P.C. were recorded wherein they stated that on 03.03.2020 a quarrel took place between first party complainant Anil Kumar, his family members and second party Rajni, Manisha, Aman, Mohit and Vaishkh and during that quarrel Harshit (son of present petitioner) stabbed Mohit Shukla with a knife. Certified CDR of Mobile Numbers 9818786823, 9811266171 of eye-witnesses Sunil Sharma and Kirpal Singh, who had recorded their statement 161 Cr.P.C. in FIR No.78/2019 were obtained. As per the record, location of Mobile number of Sunil Sharma was found at H.No.672, Gall No.9, Chander Shekhar Marg Shalimar, Village ND-88 at the time of incident. Location of mobile number of Kirpal Singh was found at Balaji Plaza plot no.26, community center K.P. Block Pitampura Delhi-34 at the time of incident.

18. Further submitted that during investigation, eye-witnesses Sunil Sharma

stated in his statement that on 03.03.2020, he along with Mukesh, Saddam and Arvind was playing cricket at Mote Wala Bagh near Police Colony Shalimar Bagh, Delhi. On that day, he along with Mukesh, Saddam and Arvind went to Police Colony Shalimar Bagh, Delhi, thus, he was present in police colony at the time of incident. Thereafter, statements of Saddam, Mukesh and Arvind were also recorded wherein they stated that they were not playing cricket with Sunil Sharma on 03.03.2020 at Mote Wala Bagh near Police Colony, Shalimar Bagh, Delhi.

19. Learned APP submitted that during investigation, ASI Shiv Hari was examined who stated that on 03.03.2020, he was present at Police Station Shalimar Bagh and petitioner was very aggressive and he misbehaved with the staff of Police Station Shalimar Bagh and also misbehaved with him in BJRM Hospital. Accordingly, lodged a DD entry in this regard.

20. Again, on the directions of senior officers, on 19.06.2020 investigation of the case was assigned to the ACP, Public Grievance Cell, North-West, Delhi, for further investigation. During investigation CCTV Footage of dated 03.03.2020 at 12:00 midnight to 25.03.2020 12:00 midnight of

Police Station Shalimar Bagh Delhi was collected through Installation Engineer of Innovative View Company Windsor IT Park, A-1, 4th Floor

Tower-B, Sector 125, Expressway Noida (UP) and the same was seized through seizure memo and the said CCTV footage was also preserved.

21. Further, on 01.07.2020, a letter was sent to SHO/Shalimar Bagh directing him to preserve Roznamcha and Public Facilitation Help

Register from 25.02.2020 to 10.03.2020. Case Diaries of this case have already been submitted before concerned DCP/NW. CCTV footage of

Police Station Shalimar Bagh Delhi from 03.03.2020 12:00 midnight to 25.03.2020 12:00 midnight has already been collected and got preserved.

22. Learned APP argued that the directions which the petitioner has sought in the present case under section 482 Cr.P.C. are legally not

maintainable, as he should have approached the Trial Court first for the same relief in view of judgment of Sakiri Vasu vs. State of U.P. [Appeal

(Crl.) 168/2007] rendered by the Honorable Supreme Court of India, the relevant paras are reproduced for ready reference:

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the

Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the

Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under

Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover

he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions

be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper

investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot

investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply

because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has

not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if

that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and

not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative

remedy the High Court should not ordinarily interfere.

29. In *Union of India vs. Prakash P. Hinduja and another* 2003 (6) SCC 195 (vide para 13), it has been observed by this Court that a

Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply

when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that

proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly

direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not

himself investigate).â??

23. However, the directions issued by this Court vide order dated 19.06.2020 have already been complied with.

24. I have heard learned counsel for the parties at length and perused the material available on record.

25. The learned APP has raised an issue that the petitioner, instead of approaching the Trial Court, has taken the shelter of this Court under section

482 Cr.P.C., thus the petition is not maintainable. However, fact is that petitioner firstly approached the Court below but Registry of Rohini Court

refused to accept petition under Section 156(3) Cr.P.C. due to suspension of work in present situation of COVID-19. No doubt, petitioner would

have waited till the Trial Courts start functioning but by that time, prayer made in the present petition would become infructuous, thus, in my

considered view, the present petition is maintainable under section 482 Cr.P.C.

26. In detailed Status Report filed on behalf of the respondent, it has not explained as to why the statement of either petitioner or his family

members were not recorded by the IO or any other police officer on 03.03.2020 after coming from hospital and why the petitioner was asked to

give his complaint in his own handwriting which later on got registered as DD No.64-B dated 03.03.2020 at 09:30 pm. It is not explained as to

why the complaint of petitioner vide DD No.64-B dated 03.03.2020 at 09:30 pm kept pending till 02:40 am of 04.03.2020 and why the FIR was

not registered based upon the said complaint immediately and the said DD No.64-B got changed to 5A as the same is being reflected by FIR

No.78/2020. Moreover, failed to explain as to why FIR No.77/2020 got assigned DD No.4A despite of alleged information was received in the

said police station at 02:40 am on 04.03.2020, prior of registration of FIR No.78/2020 based upon DD No.4A which in fact was DD No.64-B

dated 03.03.2020 at 09:30 pm.

27. It is pertinent to mention here that for implicating the petitioner and his family members who belongs to scheduled caste category by registering

FIR No.81/2020 under sections 376/323/341/34 IPC, PS Shalimar Bagh Delhi on 05.03.2020 after a delay of 2 days which seems to be false

and frivolous under the circumstances when the wife of the petitioner was granted interim bail by learned Duty MM at 08:30 pm on 03.03.2020

and further regular bail on 04.03.2020 by learned MM and the minor son of the petitioner namely Master Harshit, a student of 12th standard

whose board examinations were going on who was also granted bail on 04.04.2020 and thereafter on 16.03.2020, bail was granted to the

petitioner by the District & Sessions Court.

28. From the facts narrated in the petition and status report filed by the respondents and material on record, FIR No.81/2020 is simply a counter

blast to the complaint DD No.64-B dated 03.03.2020 at 09:30 pm and seems to be the result of conspiracy hatched by accused persons in

collusion with local police and in fact the petitioner and his family members are victim at the hands of local police and other senior officers.

29. It is important to mention here that the Status Report has not explained as to why FIR No.81/2020 under sections 376/341/323/34 IPC was

registered by the local police despite the fact that cross FIR No.77/2020 based upon the same cause of action was already registered and arrested

the petitioner on 05.03.2020 who was in jail in FIR No.77/2020. Moreover, the contents of FIR No.77/2020 are even not whispering about a

single content enshrined in FIR No.81/2020.

30. There is also no explanation as to why the Roznamcha-A could not be preserved in a situation where the Roznamcha-B and Register of Help

Desk for the mentioned dates and time could be preserved.

31. Further, it has not explained as to why the local police has not taken the cognizance of complaint vide DD No.64-B dated 03.03.2020 at

09:30 pm despite contents of which clearly invoking sections 376(D)/354/354-A/354-B/323/341/506/509/34 IPC and section 3 of SC/ST Act

which are cognizable and non-bailable in nature and even proper Sections of IPC are not reflecting in FIR No.78/2020, however, added

thereafter. Moreover, it has not explained as to why the CDR of Rohit Shukla has not been obtained whereas it is a matter of fact and record that

Rohit Shukla @ Ramanand Tiwari is the same person mentioned in the statement of Ms.â??Kâ??, Anchal and other witnesses.

32. The Status Report also failed to explain from where Mukesh, Saddam and Arvind have come into picture whereas it is a matter of fact and

record that the statement given by eye witness Sunil Sharma nowhere whispered the name and their role in his statement which was written by

Sunil Sharma in his own hand writing as per the directions of IO/ACP.

33. The law has been laid down by the Honâ??ble Supreme Court in Criminal Appeal No.1287/2008 [arising out of SLP(Criminal)

No.987/2007] case titled as â??Swaran Singh & Ors. vs. State through Standing Counsel & Anr.: (2008) 8 SCC 435â?? whereby held as under:

â??8. It may be noted that the trial has still to be held and the appellants will have an opportunity of establishing their innocence in the

trial. At this stage all that the High Court can see in the petition under Section 482 Cr.P.C. or in a writ petition, is whether on a perusal

of the FIR, treating the allegations to be correct, a criminal offence is prima facie made out or not or whether there is any statutory bar

vide Indian Oil Corporation vs. NEPC India Ltd. (2006) 6 SCC 73 6(vide para 12), State of Orissa vs. Saroj Kumar Sahoo (2005) 13

SCC 540 (vide paras 9 and 10), etc. At this stage the correctness or otherwise of the allegations in the FIR has not to be seen by the High

Court, and that will be seen at the trial. It has to be seen whether on a perusal of the FIR a prima facie offence is made out or not.â??

34. It is matter of record, despite contents of rape and other offences, section 376 IPC and other provisions of law not mentioned in the FIR

No.78/2020. However, added only after statement of prosecutrix recorded under section 164 Cr.P.C. Whereas, in FIR No.81/2020 registered

against the petitioner, much later, on 05.03.2020, section 376 IPC has been added before recording of statement under section 164 Cr.P.C.

35. It is also matter of record that petitioner, his wife and son were arrested in FIR No.77/2020 and not arrested the alleged accused in FIR

No.78/2020. It is not in dispute that arrest is not mandatory but, two parameters, one for petitioner and his family members and other/different

parameter for the accused in the present case. Thus, there is height of discrimination and misuse of power mala fide while dealing the cases in

FIRs mentioned above.

36. It is not out of place to observe that the SHO, Shalimar Bagh and IOs of the cases discussed above, have not diligently, fairly and impartially

worked as Police officers instead worked as Trial Court, whether case is made out or not.

37. In view of above discussions and the material on record, while exercising

powers under Section 482 Cr.P.C., I hereby issue directions as under:

i. Regarding the issue that Jagdev Shukla, Rohit Shukla @ Ramanand Tiwari, Mohit Shukla etc. have encroached the police land and

built house in police colony, despite they are neither employees of Delhi Police nor land allotted to them, petitioner is at liberty to file

proper petition, as per law, against above-named persons.

ii. SHO/IO of the case FIR No.78/2020 is directed to preserve ROJNAMCHA-A of 03.03.2020 and place on record along with report

under section 173 Cr.P.C.

iii. SHO/IO is directed to place on record Trial Court Record, the material seized during investigation for fair trial.

iv. Further directed to preserve and place on record the CDR of Rohit Shukla @ Ramanand Tiwari.

v. The Commissioner of Police, Delhi is directed to initiate departmental enquiry, against the SHO/ respondent no.6 and respondent

nos.4 & 5/IOs and ACPs , who have not played fair role while dealing the present FIR, as discussed above, as per law.

38. In view of above directions, the present petition is disposed of along with pending application, if any.

39. Copy of this order be transmitted to the Commissioner of Police, Delhi, SHO, PS Shalimar Bagh, Delhi and present IO/ACP for information

and necessary compliance.

40. This Court hereby make it clear that the Trial Court shall not get influenced by the observations made while passing this order.

41. It is also made clear that this order shall not create any embargo on filing any petition before the Trial Court as per law.

42. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.