

**(2022) 08 GUJ CK 0106**

**In the Gujarat High Court**

**Case No : R/Special Civil Application No. 16390 Of 2021**

Bharatsang Madhavsang Tank

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision : 24-08-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Indian Penal Code, 1860 — Section 363, 366, 376

**Citation : (2022) 08 GUJ CK 0106**

**Hon'ble Judges : Biren Vaishnav, J**

**Bench : Single Bench**

**Advocate : Shalin Mehta, Bhash H Mankad, Sanat B Pandya, Soaham Joshi**

**Final Decision : Disposed Of**

## Judgement

Biren Vaishnav, J

1. This petition, under Article 226 of the Constitution Of India, challenges the order dated 04.10.2021 passed by the Deputy Secretary, Home Department, Gandhinagar by which a penalty of stoppage of one increment for a period of two years with future effect has been imposed upon the petitioner.

2. The facts giving rise to the present petition are stated hereinbelow:

2.1 The petitioner was appointed as a Police Sub-Inspector on 01.5.2001 and thereafter promoted as Inspector. After successfully undertaking the GPSC Examinations, the petitioner was selected as a Deputy Superintendent Of Police. On and from 21.08.2015, the petitioner was transferred to Ahmedabad City and was given charge of the Assistant Commissioner Of Police, J Division from 21.08.2015.

2.2 Before the posting of the petitioner at Ahmedabad, on 27.07.2015, an FIR was lodged at the Maninagar Police Station being FIR No. 130 of 2015 under the provisions of Section 363, 366 of the Indian Penal Code. It was lodged by one

Hansaben alleging that her daughter had been taken away by some unknown persons. Initially the case was investigated by the then Police Inspector, Maninagar Police Station and on the girl being found, her statements were recorded on 28.07.2015; 29.07.2015 before the concerned Police Inspector, Maninagar Police Station and then by the then Assistant Commissioner Of Police, J Division who was handed over the investigation as Atrocities Act was also involved.

2.3 The case of the victim, as recorded in the earlier statements was never that she was picked up by the accused Zafar, however in the statement recorded on 29.7.2015, she stated that she was picked up and dropped by Zafar whereas during the course of time in between she was taken to Silver Spring Hotel where she was raped by 3 accused namely, Razaq, Maskur Ali and Sultan. This statement was given on 30.07.2015 as a result of which by a communication dated 31.07.2015, Section 376 IPC was added. The role of Zafar was only attributed to his culpability under Sections 363 and 366 of the IPC.

2.4 When the petitioner took over the investigation, the Test Identification Parade (T.I. Parade), the DVR and the CCTV footage was already seized and sent to the Forensics. It is the case of the petitioner that during the T.I Parade, the girl identified the accused Zafar but did not say that she was raped at the hands of Zafar. The bail application before charge-sheet, filed by the petitioner was rejected.

2.5 The petitioner states that the charge-sheet was filed on 4.09.2015 also where the role attributed to Zafar was essentially under Sections 363 and 366 of the Code. The accused Zafar filed an application for bail after charge sheet and by an order dated 16.09.2015 on several grounds including the finding that it is not possible to hold that a serious case is made out against the accused he was released on bail. The bail application was opposed by the Public Prosecutor based on the Affidavit filed of the Investigation Officer where it was specifically stated that the application was allowed appreciating that there was documentary evidence to suggest that CDR has been collected etc.

2.6 A further statement was given by the victim on 15.09.2015 stating that Tausif and Taslim had also raped her. A letter was also addressed to the FSL that the department had sent samples of blood for testing for analysis of the FSL which letter was received by the investigating officer after the judgment of bail. The petitioner had filed an Affidavit in his capacity as an Investigation officer.

2.7 On 27.11.2015, the Deputy Commissioner, Zone 6, addressed a letter to the petitioner that there were 9 lapses in the Investigation inasmuch as the petitioner had not shown that CDRs had recorded call details, that the Test Identification Parade should have been mentioned in the affidavit, that the DNA Report was awaited ought to have been pointed out in the affidavit etc. The petitioner gave his explanation and thereafter on 13.08.2018, the petitioner received a charge-sheet listing out these lapses on behalf of the petitioner in

carrying out the Investigation and therefore the petitioner was asked to explain his conduct which he did. A departmental inquiry was held and the Inquiry Officer by his report dated 17.07.2019 exonerated the petitioner of the charges.

2.8 A disagreement notice was issued on 24.12.2019 asking the petitioner to show cause as why the Inquiry Officer's report should not be accepted. On a reply filed by the petitioner on 10.2.2020 and a hearing through video conferencing on 7.7.2021, by the impugned order dated 04.10.2021, the petitioner has been visited with a penalty of stoppage of one increment for two years with future effect. As a result of the penalty proceedings, the DPC which met for considering the cases for promotion to the post of Superintendent of Police overlooked the case of the petitioner and persons junior to the petitioner have been promoted as a result of what is stated to be a minor penalty.

3. Mr. Shalin Mehta, learned Senior Advocate has appeared with Mr. Bhash Mankad for the petitioner and Mr. Soham Joshi, learned Assistant Government Pleader has appeared for the State.

4. Mr. Shalin Mehta, learned Senior Advocate would make the following submissions:

4.1 That the FIR for the incident in question was lodged on 27.7.2015. The statements of the victim were recorded on three occasions i.e. on 28.07.2015, 29.07.2015 and 1.08.2015 where nowhere was the case of the victim that she was raped by the prime accused Zafar.

4.2 That it had come forth from the recording of her statements that she knew Zafar and had identified him and she also had admitted that there were frequent calls made by her to Zafar and that he had picked her up and then had dropped her back at Shah Alam. Nowhere did she state that Zafar had raped her. It was because of these statements that the FIR was filed invoking Sections 363 and 366 of the Indian Penal Code. It was only after her statement on 31.07.2015 when she named the three accused of raping her that the Section was added.

4.3 That it was her case that she knew Zafar who was a friend and was therefore known to her and had always identified her and therefore merely stating that fact as a fact and eliciting it in the affidavit and mentioning about the Test Identification Parade would not have made the Affidavit more effective and merely because of this so-called lacunae, the Trial Court would not have stopped short of granting bail.

4.4 Mr. Mehta would submit that the question of not mentioning of CDRs was also misconceived when it was an admitted fact and her case too that she had been talking to Zafar over a period of time and had called her to pick her up and been with him all day. They had food at Paldi and he dropped her back at night. Merely because the fact that this was not stated in the Affidavit filed in his capacity as an Investigation Officer wouldn't have changed anything. He would submit that even the fact that the DNA report was awaited and that should have

been mentioned in the affidavit would have made no difference as for the first time on 21.05.2016 the victim named Zafar as being one of the accused who raped her i.e. more than 6 months after the accused was granted bail where she stated that she was in love with Zafar and that he had raped her.

4.5 Mr.Mehta would submit that the bail was granted looking at the Investigation Papers and the petitioner had made all efforts and instructed the Prosecutor to oppose the bail and also flagged relevant statements to be shown to the Court through the Prosecutor and therefore merely because the court exercised discretion in granting bail, the petitioner cannot now be told that because of the flaws in the Affidavit as an Investigation Officer the bail was granted.

4.6 Mr. Mehta would submit that the case on hand suggested that no misconduct was made out in any manner and the petitioner had not ignored the instructions of his superior officer so as to warrant a Penalty. This is more particularly when the Inquiry Officer completely exonerated the petitioner of all charges and the disagreement notice did not bring out new grounds so as to warrant the same grounds as grounds of disagreement without recording reasons so as to justify the action of imposing an order of penalty.

4.7 Mr. Mehta would submit that even otherwise it was a minor penalty even as per the reply filed by the State which suggested that because of the penalty being minor they did not need to consult the GPSC and therefore such a penalty could not come in the way of promotion of the petitioner to the higher post of Superintendent Of Police for which the DPC had already met and juniors to the petitioner had already been promoted.

5. Mr. Soaham Joshi, learned AGP for the State would make the following submissions:

5.1 On 14.09.2015, the FSL had written a letter to the Assistant Commissioner i.e. the petitioner that the blood samples and the semen samples had become ineffective with passage of time and therefore fresh samples were called for. In light of this letter, the petitioner ought to have apprised the Court of these developments.

5.2 In the investigation of the offence, 5 accused were arraigned. When the bail application was preferred, in the affidavit filed by the petitioner he had not pointed out the following developments:

a) He had not indicated that the CCTV footage recovered from the place of the incident has already been sent to the FSL and the report of the footage was yet awaited.

b) The Blood Samples of the accused and that of Zafar were yet to be sent for verification as demanded by the letter of the FSL dated 14.09.2015.

c) That the victim and the main accused were in constant communication with each other from 15.07.2015 till 27.07.2015 and that the victim had identified all

the accused including Zafar in the Test Identification Parade and that the DNA Sample of Zafar was not sent for verification and when the FSL had submitted the DNA Report on 29.2.2016 wherein the DNA Sample of the accused Zafar had matched, the role of the main accused was established beyond doubt and only because of ineffective affidavits filed by the petitioner, the bail was granted and the accused was given the benefit of doubt.

5.3 The petitioner had failed to gather relevant documentary evidences and file appeal for rejection of the bail to the accused and therefore the superior officer was constrained to address a letter dated 27.11.2015.

5.4 Mr. Joshi would submit that the author of the disagreement notice has given sound and cogent reasons for disagreeing with the inquiry officer who has completely exonerated the petitioner and the order of penalty therefore is just and proper.

5.5 In support of his submissions, Mr. Joshi would rely on the following decisions:

I) Lucknow Kshetriya Gramin Bank and Another versus Rajendra Singh reported in (2013) 12 SCC 372. He would rely on Para 19 of the said decision to submit that the courts cannot assume the function of disciplinary authorities and decide the quantum of punishment and nature of penalty and limited judicial review is available to interfere with the punishment imposed by the disciplinary authority.

II) Union Of India versus Ex. Constable Ram Karan , (Civil Appeal No. 6273 of 2021 decided on 11/11/2021) wherein in Paras 24 and 25 the Supreme court following the decisions in the case of B.C.Chaturvedi vs. Union Of India reported in 1995(6) SCC 749 and Rajendra Singh (supra) held that the Courts should be slow in interfering with the orders of penalty.

6. Before getting to the process of the analysis some dates and events of the incident which is the cause of the penalty need to be set out.

26.07.2015 - The victim goes missing from her home.

27.07.2015 - The Mother lodges an FIR with the Maninagar Police Station.

28.07.2015 - The victim is found and records her statement by Inspector SHri A.G.Gohel. She states that on 26.07.2015 Sunday, at around 7 PM, she along with her brother Ronit went to Jaihind Cross Roads called Manish@Timal from her phone and asked him to pick her up. Manish picked her up, she ate non-veg food then went to Shah Alam late night and sat on the footsteps of a building where the Watchman asked her to leave but she spent the night there and called her school friend on the mobile in the morning and then went to S.G.Highway and spent the night in an empty auto rickshaw, then called Jitesh to come over at Shah Alam Toll Naka and that is where the Police arrived and picked her up.

29.07.2015 - The victim records her statement twice. She adds that on 26.07.2015 in the evening when she called Jitesh he picked her up from where they went on to S G Highway where Jitesh raped her and then she was dropped

at Shahalam where three boys came on an Aactiva and they took her to Hotel Silver Spring and of the three, two boys repeatedly raped her and then the third also raped her and then they left. She left the Hotel and went around Bhulabhai Park area and then Mustakq Shaikh took her to Silver Spring Room No. 101 and raped her and next day she was dropped and in the evening she called up Jitesh and when he arrived she was then taken by the Maninagar Police.

29.07.2015 - In her second statement she stated that Manish took her and then had raped her and when he wanted her to be dropped home she refused. She then stated that on 26.07.2015 she went out of her home with her brother and then called up Zafar who picked her up then they went to Paldi area, had Dosas and then Zafar dropped her at Shah Alam. She denied that as per her earlier statement she was raped by Timal@Manish.

30.07.2015 - A further statement was recorded of the victim. On this date she stated that on 26/07/2015 Sahil alias Zafar had taken her and then dropped her at night at Shah Alam and where one Mashkur Ali, Razak and Sultan took her to Silver Spring Room No. 102 and thereafter again next day one Mushtak Shaikh took her to Room 101 of the Hotel and then she left the hotel.

Therefore she named three persons except Zafar as the culprit in rape. Uptil now only Sections 363 and 366 were the Sections of the IPC which were pressed into the investigation but because of her naming the three names involved in raping her Section 376 and the provisions were added by a letter and the Investigation was handed over to the Assistant Commissioner Of Police, Ms. Rima Munshi on 1.8.2015.

01.08.2015 - The victim answered few questions wherein she stated that Zafar after Dosas at Mahalaxmi Char Rasta dropped her at night and he had not raped her. She stuck to her earlier statement that Razak, Mashkur and Tausif had raper her at the Silver Spring Hotel.

20.08.2015 - The petitioner on being transferred as the Assistant Commissioner of Police, J Division, Maninagar Police Station was handed over the investigation.

31.08.2015- A Test Identification Parade was carried out.

1.09.2015 - Bail Application of Zafar was rejected prior to Charge-Sheet.

4.09.2015 - Charge-Sheet was filed by the petitioner and as no role was attributed to Zafar under Section 376 of IPC the Charge Sheet only reflected his role as per Sections 363 and 366 of the Indian Penal Code.

14.09.2015 - The petitioner as an investigating Officer filed an Affidavit. He narrated the sequence of events. Zafar@ Salim was shown as Accused No.1, Taufik was shown as Accused No.2, Razak was shown as Accused No.3, Mashkur Ali was shown as accused No.4, Shozab as Accused No.5, Mushtak as Accused No.6; Accused Nos. 7,8, and 9 were Vijaybhai; Rameshbhai and Bharatbhai of the Silver Spring Hotel. The Affidavit stated that call details of Zafar were

produced. That medical samples of the 4 accused who raped her were produced. That the accused no.1 had kidnapped her. That there were call records to show that Zafar had called the Accused No.4 on his phone. That as per the statements of the victim, the accused nos. 2, 3, 4 had raped her and that the accused no.1 had left her at Shah Alam as per the statement of Junaid. He had also attributed the breach on the part of the hotel staff who were named as accused as well as the owner of Hotel Silver Spring in not asking for the ID Proof. The Affidavit therefore stated that no Bail ought to be granted.

16.09.2015 - The Court granted Bail to Zafar.

21.09.2015 - Since the letter dated 14.09.2015 was received from the FSL on 16.09.2015 the petitioner asked for permission to get blood samples of all accused.

27.11.2015 - DCP, Zone 6 issues a communication listing 9 lapses of the petitioner in carrying out investigation.

- \* That blood sample of Sozab alias Sultan not taken and DNA Test Report result awaited and no alacrity shown to get one.

- \* Whether as per letter dated 14.09.2015 blood samples of Zafar and Taufik sent for DNA.

- \* In the affidavit filed, the petitioner had not mentioned that Zafar was identified in the T.I. Parade and by omitting to state so the petitioner was negligent.

- \* Negligence on behalf of the petitioner in not mentioning that Zafar had talked to the victim from 15.07.2015 to 28.07.2015 for over 14 hours and 57 minutes.

- \* Not mentioning in the affidavit that Zafar had dropped the victim late night at an isolated spot and had he not done so the incident of rape wouldnt have happened. This omission amounted to negligence on part of the petitioner.

- \* Negligence in not mentioning in the affidavit that the DNA Test of Zafar was pending.

- \* Two lapses in not mentioning in the affidavit that Vijaybhai and Rameshbhai of the Hotel Silver Spring had committed breach of the Notification of not asking for ID Proofs.

15.12.2015 - The petitioner filed a detail response denying the lapses.

29.2.2016 - FSL gives a report where DNA Samples of Zafar match with the victim.

21.05.2016 / 23.5.2016 - Victim for the first time gives a Statement mentioning that she had a love affair with Zafar and that she raped her.

27.05.2016 - The petitioner applied for a certified copy of the bail order and discussed the same with the APP to file an application for cancellation of Bail in

view of the changed circumstances.

31.05.2016- The petitioner is transferred as Dy.SP Cyber Crime.

06.03.2017 - State's Application for cancellation of bail rejected by Sessions Court Ahmedabad.

6.1 The sequence of events would indicate that initially the victim's version was that she had called up Zafar to pick her up from the Meladi Mata Temple. They went around the whole day and then she was dropped off by him at a lonely place. She had admitted to her affinity to Zafar but had never named him in her statements when Section 376 IPC and the provisions of the Atrocities Act were added and the Investigation was handed over to Ms. Rima Munshi. She had specifically named only the three other accused of taking her to Rooms 101 and 102 of the Silver Spring Hotel and raping her.

6.2 In fact after Ms. Rima Munshi, the then Assistant Commissioner Of Police, J Division who was handed over the Investigation and when a statement in the question-answer form was recorded on 31/08/2021 also indicated that she had expressly denied a suggestion that Zafar had any sexual intercourse with her. The only narrative common to all statements as far as Zafar and his complicity was that she had called up Zafar who picked her up, they went around, they had Dhosas at Paldi and when he offered her to drop her home, she requested to be dropped off at Shah Alam and he dropped her late in the night and left. No role so as to involve him in the offence related to the provisions of Section 376 IPC were ever evident expressly or imperative by Zafar even as per her version. She had admitted that she knew him and had made calls to him over a period of time prior to the incident in question.

6.3 To the letter dated 27.11.2015 pointing out the 9 lapses, it was specifically pointed out by the petitioner that when the FSL made a request for fresh samples of Sohazab @ Sultan etc. they were in Sabarmati Jail and the petitioner had immediately written for a request for Police Custody and pursuant that hearings were held and adjourned from time to time and samples could not be taken as proceedings were being adjourned. A note was made that samples be taken as soon as the police get custody.

6.4 With regard to DVR and CDs received, it had been pointed out by the petitioner that the process is on before the Gujarat High Court to get the bail cancelled. As far as call details are concerned, it was even otherwise an admitted fact by the defence counsel and the victim herself that she was in contact and Zafar was a friend and the letter of the FSL dated 14.09.2015 was after the Charge Sheet. Vijabhai of the Hotel was released on bail by the High Court.

7. Reading the charge-sheet dated 13.08.2018 indicates the imputations that had the petitioner mentioned the fact that in the Test Identification Parade the victim had identified Zafar, the affidavit would have been more effective; that the call details and the victim and the accused Zafar were in touch ought to have



been mentioned; that the fact that Zafar dropped the victim at a deserted place made the incident of rape possible and that fact also was not stated in the affidavit and the lapse of the three people of the Silver Spring Hotel in committing breach of the Notification of the Police Commissioner dated 24.07.2015 by not asking for ID Proof and the breach of the Notification also was not stated in the affidavit.

8. Perusal of the Inquiry Officer's report and the examination and cross examination of the Reader Chandresh Atmaram Shilojia would indicate that when the Victim had clearly stated that she knew Zafar, that a Test Identification Parade was carried out was an inconsequential fact. It is an established fact that the Law Enforcement Agencies use the mechanism of Test Identification Parade to establish the credibility of a witness where he/she has never seen the accused except at the scene of the crime. In the case on hand, the victim had not denied that she knew Zafar and had in fact gone around with him on his motorcycle and it was therefore not a case that she had to identify someone unknown related to the context of the offence. Looking to the role of the accused Zafar, it was specifically as per the statements of the victim restricted to the charge under Sections 363 and 366 of the Indian Penal Code and therefore the Affidavit was also on the same lines and the Affidavit clearly mentioned that the details by way of documentary evidence of the call records was attached.

9. In context of the statement of the victim and the charge-sheet and the affidavit filed by the petitioner, the Inquiry Officer had to address himself to the questions whether omission to mention details of the Test Identification Parade was not a material one in light of the admitted facts that because of Zafar leaving the victim at the dead of night and the omission to mention that would have influenced the court otherwise; had the affidavit shown that the DNA was pending would also have influenced the court otherwise in not granting bail etc. The Inquiry Officer has in great detail discussed the circumstances and the case of the prosecution and the investigation and the material placed before him. It has held that the charges cannot be held to be proved. In doing so it has considered the issues as follows:

a. The Inquiry Officer found that yes it is true that in the affidavit filed by the petitioner before the court as an Investigation Officer, it was not stated that the victim had identified Zafar in the Test Identification Parade. It is not the case of the prosecution or the grounds of bail and the court granting the Bail on the ground that both Zafar and the victim did not know each other. The defence of Zafar was not that he never knew the victim. In fact the victim had gone on to say that she knew Zafar had made calls to his mobile phone and called him at the cross roads near her home and asked to be picked up. That she was in touch and in contact with Zafar and her proximity was known and merely by not adding the fact of she having identified Zafar in the T.I.Parade or producing the CDRs would not have given "effectiveness" to the Affidavit as so stated by the disciplinary authority. It cannot be said that merely by not stating the fact of the

Test Identification Parade in the affidavit had benefited the accused Zafar to secure Bail.

b. The case of the department was that the victim had talked to Zafar in the period from 15.07.2015 to 28.07.2015 for 14.57 hours and this fact was not pointed out in the affidavit, the Inquiry Officer on examination of the order of bail found that it was an admitted fact that the victim and Zafar were in touch with each other and that Victim had talked to Zafar on 28.07.2015 was very much on record and therefore not producing the CDRs had not proved fatal to the case of the investigation in granting the discretionary relief of bail. The CDRs were also produced before the court and therefore the absence of this fact of they being in constant touch and its omission as a fact in the reply also would have not made any difference in the outcome of the Bail proceedings.

c. The other flaw of omission to mention the prime role of the accused Zafar in leaving the victim late in the night at an isolated spot so as to facilitate the subsequent happenings therefore indicated Zafar's role and not mentioning of this fact in the Affidavit as an Investigating Officer was seriously flawed and should have been mentioned in the reply. What has come on record on reading of the bail order is that the place Bhulabhai Park cannot be said to be a deserted place so as to make the accused Zafar being responsible as a larger role in the crime. In fact it was clearly pointed out by the statement of one Junaid recorded on 01.09.2015 that Zafar had called him and assigned him the task of dropping the victim at home and therefore there was nothing further to be attributed with respect to the allegation against Zafar of dropping the victim at an isolated spot.

d. The stand of the disciplinary authority that the omission of mentioning that the DNA Reports of Zafar were awaited also is not correct. What has been the procedure is that it was only on 21.5.2016 for the first time that the victim had specifically stated that Zafar and they were in love and that Zafar had raped her. Till such date in the victim's version as far as the story of rape is concerned she had vocally and expressly not mentioned Zafar as being responsible for the rape. His role as per her previous statements were only taking her around on his motorcycle and not the rape angle. This therefore would not have made a difference to the bail considerations that weighed with the Court on 16.09.2015 granting bail.

e. As far as the other accused namely the hotel owner and the personnel the notification was out only on 24.07.2015 and the date of the incident was too proximate on 26-27-7-2015 and even otherwise it was clearly the case of the investigation officer that in the affidavit it was stated that they had committed a breach by not asking their details as soon as possible. In fact reading of the affidavit of the petitioner indicates that the petitioner had expressly stated that not entering the names of the accused accurately in the register and not asking for ID Proof was a serious omission and therefore they too were arraigned as accused as they were complicit in the crime.

10. What is also evident is that after the first few statements of the victim were recorded on 28.7.2015, 29. 08.2015 and 01.08.2015 for the first time on 21. 05.2016 almost after 6 months did the victim expressly state that she was in a relationship with Zafar and that he had raped her. This had prompted the petitioner to move an application for cancellation of bail promptly due to changed circumstances which was rejected by the Court. Apart from a bare statement, there is nothing on record to suggest that the flaws in the affidavit were fundamental or such that the bail could have been denied or the decision of the court, but for the "effectiveness" of the Affidavit would have been otherwise.

11. After the Inquiry Officer's Report, reasons for disagreement when perused are nothing new or cannot be said to be "reasons" but "re-iteration" of the stand that the authority had advanced in the departmental charge sheet or before the Inquiry Officer. Merely because the perception is different would not make the reasons for disagreement sustainable.

12. The allegation of the CCTV Footage is entirely a new allegation made which does not find mention in the show-cause notice and in the order of penalty. What is also evident is that as soon as the letter dated 14.09.2015 was received, efforts were made to receive blood samples and a letter was written on 21.09.2015 by the petitioner. The records also indicate that at the instance of the petitioner application for cancellation of bail was filed in light of the statement made by the victim on 21.05.2016 being Criminal Miscellaneous which the Sessions Court rejected on 06.03.2017. The order has not been carried further to the High Court.

13. What is also important to note is that all the accused including Zafar have been enlarged on bail on account of the fact that the victim and the parents of the victim filed affidavits in support of the accused and stated that they had no objections if the accused all, including Zafar were enlarged on bail. The order of the court below the application for cancellation of Bail in Zafar's case also records that the victim and the parents have no objection and therefore the bail granted by the Trial Court need not be cancelled.

13. Keeping all these aspects in view what is evident that the records clearly indicate that no misconduct can be attributed to the petitioner so as to warrant a penalty of any nature.

14. The order of penalty dated 04.10.2021 passed by the respondents is therefore quashed and set aside. In light of the order of penalty being quashed and it being no longer a disqualification for consideration for promotion to the post of Superintendent of Police, the petitioner's case for promotion which was overlooked in the DPC which met for considering the case of the candidates for promotion to the post of Superintendent of Police needs a fresh look. In view of the order of penalty having been quashed, the case of the petitioner has to be considered for promotion as Superintendent of Police in light of the order dated 24.12.2021 passed in Civil Application No. 1 of 2021 which reads as under:

"Heard learned Senior Advocate Mr. Shalin Mehta for learned Advocate Mr. Bhash H. Mankad for the applicant and learned AGP Mr. Utkarsh Sharma for the respondents.

The present Civil Application has been preferred in context of grievance raised by the applicant that erroneous instructions were given to the learned AGP appearing at the relevant point of time, and therefore incorrect statement as a consequence thereof was made.

It appears that at the relevant point of time, it was submitted that there is no proposal for considering the cadre of the petitioner i.e. Dy.S.P. cadre for further promotion, but later on DPC has been conducted.

Having regard to the same, more particularly considering the fact that the learned AGP had been erroneously instructed, by way of interim relief, it is directed that in the DPC concerned, if the juniors to the present petitioner are recommended for promotion, seniority of such persons junior to the petitioner in the Cadre of Dy.S.P., qua the petitioner would subject to final result of the main petition.

The present Civil Application is disposed of accordingly.

Let the main matter being Special Civil Application No. 16390 of 2021 be listed on 21.02.2022."

15. The respondents are therefore directed to consider the case of the petitioner for promotion to the post of Superintendent of Police on and from the date his juniors were considered for such promotion and the petitioner be on such consideration granted seniority and such consequential benefits as may be so available on he being so promoted as Superintendent of Police. Petition is accordingly allowed. Rule is made absolute with no orders as to costs. Direct service is permitted.