

(2020) 11 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 35684 Of 2020 (O&M)

Kavita

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 19-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 173, 176(1A)(b), 482
Indian Penal Code, 1860 — Section 148, 149, 186, 302, 353, 376(2A), 376D, 404
Arms Act, 1959 — Section 25
Protection Of Children from Sexual Offences Act, 2012 — Section 6

Citation : (2020) 11 P&H CK 0063

Hon'ble Judges : Archana Puri, J

Bench : Single Bench

Advocate : Rajvinder Singh Bains, Deepak Sabharwal

Final Decision : Disposed Of

Judgement

.....

Archana Puri, J",

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.....

The present petition under Section 482 Cr.P.C. has been filed by petitioner Kavita, thereby making prayer for issuance of appropriate directions for"

immediate and urgent medical treatment of both the victims-prosecutrix-1 and prosecutrix-2 (names withheld) who are in judicial custody at Central.....

Jail Karnal and juvenile home Karnal respectively at PGIMER, Chandigarh and also sought issuance of an appropriate directions for constituting"

medical board for comprehensive medical examination of both the victims out of State of Haryana, preferably at Chandigarh PGIMER or Government"

Medical College and Hospital, Sector 32, Chandigarh. Besides the same, further direction has been sought to protect the life of the victims, as they are" ,,,,,

in judicial custody and the respective Superintendent of the Institute be made responsible for the security. Further, direction has also been sought to be" ,,,,,

issued to the respondents to permit the petitioner and the family members of other victims, along with their lawyer, to meet the victims in judicial" ,,,,,

custody, so that complete details of what has actually happened could be found." ,,,,,

The petitioner is mother of prosecutrix-1 and aunt of prosecutrix-2, who are confined in Central Jail, Karnal in case FIR No.182 dated 30.06.2020" ,,,,,

under Sections 148, 149, 186, 302, 353, 404 IPC and Section 25 of Arms Act registered at Police Station Barauda, District Karnal, initially but" ,,,,,

however, one week ago, prior to the filing of the present petition, the juvenile has been transferred to the juvenile home. Prosecutrix-1 is around 17" ,,,,,

years old and prosecutrix-2 is 20 years old. ,,,,,

It is asserted in the petition that the aforesaid FIR has been registered, pursuant to the information received by the police about two police officials," ,,,,,

namely Constable Ravinder and SPO Kaptan having been murdered by some unknown persons in front of Haryali Park of village Butana, while they" ,,,,,

were on patrolling duty. On reaching the spot, the police had found the dead bodies, whereupon, the FIR was registered against unknown persons." ,,,,,

However, during the investigation, the petitioner came to know about the incident and she herself took her daughters to police station on 02.07.2020," ,,,,,

while she came to know about the involvement of Amit in murder. She had taken her daughter and niece to police station to explain that her daughter ,,,,,

and her cousin have not killed the police officials. Rather, they had gone to meet afore-mentioned Amit. Thereafter, the petitioner had gone to meet" ,,,,,

her daughter in Central Jail, Karnal on 15.07.2020, where she come to know that her daughter is not well and therefore, she could not talk to her." ,,,,,

Again, the petitioner went to jail on 18.07.2020, where her daughter apprised that 10-12 police officials have committed rape upon her and prosecutrix-" ,,,,,

2. She further named three persons i.e. Sanjay, Radhe and Sandeep of Women Police Station, Sonipat. The daughter of petitioner also apprised that" ,,,,,

these police officials have beaten them brutally and they are unable to sit and her vagina is bleeding continuously. Thereafter, respondent No.2 never" ,,,,,

allowed the petitioner to meet her daughters. Relating to the same, the petitioner had also made complaint to SHO Police Station, Barauda on",,,,,

18.07.2020 but no action was taken. Then, she moved a complaint before Haryana Women Commission Sector-4, Panchkula, thereby requesting for",,,,,

taking action and on the basis thereof, FIR No.65 dated 30.07.2020 was registered at Women Police Station, Sonipat against the aforesaid Sanjay",,,,,

Radhe and Sandeep.,,,,,

It is further the claim of the petitioner that her daughter and niece have been falsely implicated in the present case. In fact, they had gone to meet",,,,,

Amit and his friend. Further, she has narrated in the petition about the manner, in which the police officials namely Constable Ravinder and SPO",,,,,

Kaptan had come there, while they were drunk and they had demanded money from Amit, on the pretext that they are sitting in the car at late night.",,,,,

Further, they also started molesting the daughter of the petitioner and prosecutrix-2 and further told Amit to send the girls to police station for a night.",,,,,

On raising objection, heated argument had taken place and in a fit of anger, Amit had injured both the police officials to protect prosecutrix-1 and",,,,,

prosecutrix-2 from further molestation. Further, the petitioner has given the manner of Amit having been killed in fake encounter to destroy the",,,,,

evidence and further also, the police officials have tried their best to destroy the evidence against police officials, who had gang-raped and molested",,,,,

the daughter of the petitioner and prosecutrix-2, while in custody, by not giving them proper medical treatment and want them to die to conceal the",,,,,

truth coming out. Regarding the incident of custodial gang-rape and brutal physical assault on the daughters of the petitioner by police officials, even",,,,,

the Civil Rights Forum, Sonipat has given an application to Juvenile Justice Board, Sonipat. It is stated in the application that police have committed",,,,,

gang-rape on prosecutrix-1 and molested prosecutrix-2 and after registration of ibid FIR No. 0065 and recording of statement under Section 164,,,,,

Cr.P.C., the police officials are continuously committing physical and mental torture on both the girls.",,,,,

Further, it is averred in the petition that petitioner has approached respondent No.2 several times, to allow her to meet her daughters but she has not",,,,,

been allowed to meet her daughters. Even, Sumitra, wife of Pawan resident of Bari Bazar, Jain Mandir, Sonipat who was sent to jail on 05.08.2020",,,,,

and released on bail on 19.09.2020, has approached the petitioner on that very day i.e. 19.09.2020 and apprised the petitioner that her daughters have",,,,,

been brutally assaulted and they need immediate medical treatment/examination. Then, on 20.08.2020, the petitioner moved an application to",,,,,

Chairman, Human Rights Commission, Chandigarh and requested that her daughters may be provided the medical treatment, as they have been gang-",,,,,

raped by 10-12 police officials in their custody, for the last one month and bleeding has not stopped. Even, application was filed to Chairman, National",,,,,

Women Commission, Delhi, Chairman, National Child Rights Commission and Chairman Scheduled Caste Commission, Haryana but till date no",,,,,

response has been given to the petitioner. Now, the petitioner has apprehension in her mind that her daughters may be killed in police custody, as they",,,,,

are instrumentally bringing the truth regarding two incidents, firstly relating to FIR No. 182 in which the daughters of the petitioner are in custody and",,,,,

in FIR No.65 which has been registered regarding the gang-rape of daughters of the petitioner. Also, it is mentioned in the petition that from the media",,,,,

reports, the petitioner has come to know that SIT has been constituted to inquire into the matter, which has been constituted, in pursuance of the",,,,,

recommendation so made by the Judicial Magistrate, who conducted judicial enquiry in the case. The petitioner further suspect foul play, as the",,,,,

petitioner or any other family member of the petitioner has not been allowed to meet prosecutrix-1 and prosecutrix-2 after 18.07.2020. Also, the",,,,,

petitioner has come to know that fake medical examinations were conducted revealing nothing on the body of the victims and they got the signature by",,,,,

brutally beating them again and again. The truth is so important at this stage, that the victim life must be protected and they must be given all possible",,,,,

medical treatment and also all evidence of brutality and crime ought to be preserved. Hence, the present petition has been filed with the prayer, as",,,,,

already detailed aforesaid.,,,,,

Reply was also filed at the instance respondents No.1, 3 and 4. In the reply, the respondents have narrated their version vis-a-vis registration of FIR",,,,,

No.182 dated 30.06.2020 under Sections 148, 149, 186, 302, 353, 404 IPC and Section 25 of the Arms Act, in pursuance of the information so",,,,,

received qua murder of Constable Ravinder and SPO Kaptan posted at Police Post Butana, Police Station Baroda, Sonipat. They have also given the",,,,,

manner of lead, having been obtained in the case vis-À-vis involvement of car bearing registration No.HR-56B-8192, in pursuance of the mention of" ,,,,,, the same made in the post-mortem report of Constable Ravinder, wherein, this number was found written on the palm of his left hand. The detail of" ,,,,,, the injuries so received by both the police officials have been stated therein. Further, in the reply, it is stated that a number HR-56B-8192 which was" ,,,,,, found written on the palm of left hand of Constable Ravinder was identified to be that of I-10 Grand car, of which one Gurjit, son of Roshan Lal was" ,,,,,, the registered owner. After contacting Gurjit, it was found that this car had also been sold to one Sandeep, son of Jogender. Thereafter, Sandeep was" ,,,,,, contacted, who had also disclosed about Amit @ Sunara S/o Rajkumar and two of his friends with him, on the relevant night. He also stated about" ,,,,,, Amit to have given one slip, where one mobile number was written and stated that, it was in his jean pant, which may be recovered from his house." ,,,,,, Thereupon, the police party had gone to the house of Sandeep and his mother was present there. While the police party was still there, two boys had" ,,,,,,

Date,Time,Name,Relation,Guardian,Address

13-07-2020,"10:08

AM","Mukesh

(Male)","Cousin,Dilbag Singh,"Butana Kundu,

Distt. Sonipat

13-07-2020,"10:06

AM","Kavita

(Female)","Mother,"W/o Raj

Kumar","Butana Kundu,

Distt. Sonipat

15-07-2020,"10:23

AM","Kavita

(Female)","Mother,"W/o Raj

Kumar","Butana Kundu,

Distt. Sonipat

18-07-2020,"10:51

AM", "Kavita
(Female)", Mother, "W/o Raj
Kumar", "Butana Kundu,
Distt. Sonipat
Date, Time, Name, Relation, Guardian, Address
13-07-2020, "10:06

AM", "Babita
(Female)", Mother, "W/o Jai
Narayan", "Butana Kundu,
Distt. Sonipat
13-07-2020, "10:06

AM", "Mukesh
(Male)", Cousin, Dilbagh Singh, "Butana Kundu,
Distt. Sonipat
30-07-2020, "11:58

AM", "Babita
(Female)", Mother, "W/o Jai
Narayan", "Butana Kundu,
Distt. Sonipat
30-07-2020, "11:58

AM", "Jai Narayan
(Male)", Father, Maha Singh, "Butana Kundu,
Distt. Sonipat
10-08-2020, "4:32

PM", "Pawan
(Male)", Advocate, Jage Ram, "New Tara Nagar
Sonipat. Contact
No. 9466600577
20-08-2020, "4:45

PM", "Ram Parsad

(Male)", Advocate, Pokhar Mal, "99 Weavers

Colony PNP

Chamber No. 190

Distt. Court,

Panipat, Contact

No. 7015078042

10-10-2020, "5:12

PM", "Sonia Tanwar

(Female)", Advocate, Jairam Ranga, "Chamber No. 370

4th Floor, Distt.

Karnal

to the role of aforesaid two girls in the same and role of police officials, is concerned, there is intentional restraint made by this Court lest the",,,,,

investigation may be influenced, in one manner or the other.",,,,,

In the petition itself, the petitioner has stated that during the course of investigation of the matter, qua the death of two officials, she came to know",,,,,

about the incident and she took the girls to the police station on 02.07.2020, when she came to know about involvement of Amit in the murder. It",,,,,

clearly shows about the arrest of aforesaid girls having not been effected on 01.07.2020, as so stated by the victim girls before the Magistrate during",,,,,

the course of the enquiry conducted under Section 176(1A)(b) Cr.P.C., the report whereof is Annexure R-9. As per version of the respondents, both",,,,,

the aforesaid girls were arrested in ibid FIR No.182 on 03.07.2020. In the light of the material so coming forth and the arrest having been so effected,",,,,

the period of custody, during the course of enquiry, had been taken to be from 03.07.2020 to 05.07.2020. It has been specifically observed in the",,,,,

enquiry that there is no document on record, which could prove that both the aforesaid girls were arrested by the police on 01.07.2020. May it be so, it",,,,,

is pertinent to mention that soon after arrest, both the girls were subjected to medical examination on 03.07.2020 and then, after the police remand,",,,,

before sending them to judicial custody, again their medical examination was conducted. The said examination reports have been placed on record.",,,,

The perusal of the same reveals that it was specifically observed by the

concerned doctor about no visible mark of injury seen over body and genitalia.,,,,,,
Even, detail of the medical examination and the observation so made by the
concerned doctor, during these two medical examinations, have been",,,,,,
specified by the Magistrate in the enquiry report. Not only this, even thereafter,
the medical examination of the said girls were conducted. They did not",,,,,,
make any complaint of pain, gang-rape, internal injury or bleeding at that time.
Both the said alleged victims, at the time of their medical examination",,,,,,
before the concerned doctor and even, while they were produced before the
Court on 03.07.2020 and 05.07.2020, did not dilate anything relating to the",,,,,,
atrocities committed by the police officials as now claimed, relating to which abid
FIR No.65 has been registered on 30.07.2020. There was total",,,,,,
silence at that time. On the basis of the material so coming forth, the concerned
Magistrate, in the enquiry, has reached the conclusion that the medical",,,,,,
evidence with regard to the commission of rape, is inconclusive at this stage.
Though, he opined that possibility of rape cannot be ruled out, but it",,,,,,
cannot be clearly established in this enquiry whether prosecutrix-1 was raped by
any police official during police custody. Even, in pursuance of an",,,,,,
application so filed, vide order dated 27.07.2020, the concerned Magistrate had
ordered for medical examination of both the alleged victims,",,,,,
whereupon, it was so conducted and there also, there was stated to be no injury
mark and there was also total silence by both the alleged victims, at",,,,,,
that stage. This shows that multiple times, medical examination of the victims
were conducted but there was total silence maintained by them, at every",,,,,,
opportune time, to disclose about the occurrence so caused. Considering the
very fact of the victims, having been medically examined multiple times, it",,,,,,
shall not be appropriate to further direct the constitution of Medical Board, for
comprehensive medical examination of both the victims, more",,,,,,
particularly, considering the duration of time having lapsed, since then. However,
the matter relating to allegation of custodial rape, is now handled by",,,,,,
SIT headed by Ms.Nikita Khattar, who is an IPS Officer. That being so, the probe
shall be conducted in the due course and it shall be open for SIT to",,,,,,
examine the question of medical re-examination of the victims qua the atrocities
of the police officials during the time of their custody in police station,,,,,,
and then proceed further in accordance with law. But any how, it is utmost
necessary that both the girls should be given appropriate medical",,,,,,

treatment, so required, while they are in judicial custody at Central Jail, Karnal and Observation Home, Karnal respectively. Considering the same, it is" ,,,,,

so ordered that Superintendent, Central Jail, Karnal and Incharge, Observation Home, Karnal, respectively, shall take appropriate steps for extending" ,,,,,

medical treatment to both the aforesaid girls in PGIMER, Chandigarh, in coordination with Secretary, District Legal Services Authority, Sonapat." ,,,,,

Superintendent, Central Jail, Karnal and Incharge, Observation Home, Karnal, shall coordinate with Secretary, DLSA, Sonapat and facilitate extending" ,,,,,

of medical treatment to prosecutrix-1 and prosecutrix-2, in PGIMER, Chandigarh. Even, both the Heads of Central Jail and Observation Home, are" ,,,,,

hereby directed to ensure and take appropriate steps, so as to protect the life of the victims, while they are inmates of Central Jail and Observation" ,,,,,

Home. They shall also apprise of the steps so taken, to the Secretary, DLSA, Sonapat, who shall also record his satisfaction, qua the steps so taken." ,,,,,

As per the version of the petitioner, after 18.07.2020, respondent No.2, who is Jail Superintendent, Central Jail, Karnal, has not allowed the petitioner" ,,,,,

and her family members to meet the victim girls. However, in reply, detailed chart has been reproduced about the dates when the family members of" ,,,,,

alleged victims had met them in the jail premises. The perusal of the detail, so given in paragraph No.6 of the reply filed by respondent No.2, reveals" ,,,,,

that petitioner had lastly met prosecutrix-1 on 18.07.2020 and thereafter, there were three meetings with prosecutrix-1, on 10.08.2020 by one Rakesh," ,,,,,

who is Advocate; second on 20.08.2020 by Ram Parsad, who is also Advocate and third on 10.10.2020 by Sonia Tanwar, who is also an Advocate." ,,,,,

Likewise, family members of prosecutrix-2 had met prosecutrix-2 lastly, on 30.07.2020 and thereafter, on 10.08.2020, 20.08.2020 and 10.10.2020," ,,,,,

Advocates by the name of Pawan, Ram Parsad and Sonia Tanwar had respectively, met prosecutrix-2. Relating to the same, even details of visitor" ,,,,,

register have been annexed with the reply. Even though, it is claimed that the inmates had met the Advocates but however, learned counsel for the" ,,,,,

petitioner submits that these Advocates were neither engaged by the petitioner nor the inmates and they have no concern with these Advocates. Even" ,,,,,

from the records, so produced, it is not evident, whether these Advocates were legal aid counsel or not. In these circumstances, it cannot be" ,,,,,

concluded with certainty as to whether, there was any effort made by the petitioner/family members to meet the inmates after 18.07.2020 and" ,,,,,

30.07.2020 respectively and same was denied by the jail authorities. The jail record which is available, shows that the petitioner and her relatives had" ,,,,,
met inmates lastly on 18.07.2020 and 30.07.2020 and thereafter, Advocates have met. Who are these Advocates, there is nothing as such, coming on" ,,,,,
record. But anyhow, the jail authorities are required to facilitate meeting of the victims with the petitioner/relatives, in accordance with Rules and also" ,,,,,
the instructions, so issued, during Covid-19 pandemic. As such, the Superintendent, Central Jail, Karnal and Incharge, Observation Home, Karnal, are" ,,,,,
hereby directed to ensure and facilitate regular meetings of the petitioner and family members of prosecutrix-1 and prosecutrix-2 in accordance with,,,,,
Rules and the latest instructions issued by Government of Haryana.,,,,,
Accordingly, the present petition stands disposed of in view of aforesaid terms." ,,,,,
However, these observations are circumscribed only for the purpose of disposal of this petition and shall have no impact on the pending" ,,,,,
investigation/trial of all the above-mentioned FIRs, in any manner." ,,,,,