

CRM-M-2046-2021(O&M) and others

**CRM-M-2046-2021(O&M)
CRM-M-10830-2021(O&M)
CRWP-10536-2021
COCP-1618-2022**

-.-

Mohit Dhawan Vs. UT Chandigarh and another

-.-

Present: Ms.Puja Chopra, Advocate with
Mr. Harlove Singh Rajput, Advocate for the petitioner

Mr. Anil Mehta, Senior Standing counsel with
Mr. C.S. Bakshi, Addl.PP for UT and
Mr.Prateek Rathee, Advocate Standing counsel for UT

-.-

In view of the detailed submissions discussion has been covered under relevant heading as detailed below:-

EVENTS WHICH LED TO THE PRESENT PROCEEDINGS

Present petition was filed by the petitioner under Section 438 of Cr.P.C. praying for grant of anticipatory bail, in case FIR No.0075 dated 21.09.2020, under Sections 419, 420 of IPC registered at Police Station, Sector 19, U.T. Chandigarh.

In this case, interim relief was granted to the petitioner, however, among allegations (by petitioner that he is being pressurized by the police to compromise in 02 other FIRs filed against him and so he was being prevented by police officials from joining the investigation before the Illaqa Magistrate) and counter-allegations (by the prosecution that petitioner was not cooperating in the investigation), vide order dated 05.01.2022 passed by this Court, he was directed to appear before the Illaqa Magistrate, Chandigarh on 07.01.2022 at 11:00 a.m. so as to join investigation.

On the next date of hearing i.e. on 13.01.2022, on the one hand, it was submitted by the learned APP that petitioner having been

CRM-M-2046-2021(O&M) and others

arrested in another FIR No.56 dated 06.10.2021, registered at Police Station Sector 19, Chandigarh, present petition was rendered infructuous. On the other hand, it was contested on behalf of the petitioner, that though he reached the District Court Complex - Sector 43, on 07.01.2022, in the morning at about 10:30 am, but before he could present himself before the Illaqa Magistrate, he was abducted by four police officials, namely, Constable Vikas Hooda, HC Anil Kumar, Amitoj (later found ASI Ajmer) and Constable Subhash Kumar, of Crime Branch, UT Chandigarh (hereinafter referred to as 'alleged abducting police team') so that he could not appear in the Court and in the meanwhile second police team consisting of Inspector Harinder Singh Sekhon, Sub Inspector Suresh Kumar and Senior Constable Neeraj (hereinafter referred to as 'second police team') marked themselves present before the Illaqa Magistrate awaiting appearance of petitioner. Consequently, multiple applications were filed by the petitioners in this case, and in pursuance thereof, multiple orders were passed by this Court so as to preserve, CCTV footage of the Court Complex and the CDRs besides the Geosat locations of the mobile phones belonging to the petitioner as well as police officials involved in the alleged abduction as well as arrest of the petitioner, for the relevant time on the date of alleged incident i.e. 07.01.2022.

On account of applications, counter-applications and affidavits by both sides, this Court was being dragged into the realm of investigation and trial, while it was felt by this Court that neither it has expertise; nor the domain knowledge to proceed back and forth in the matter on day-to-day basis. Consequently, it was agreed by the

CRM-M-2046-2021(O&M) and others

parties that this Court should hear both the parties and decide whether in view of the prevailing circumstances and the material available on record, direction about registration of FIR and investigation regarding the alleged abduction of petitioner on 07.01.2022 by the alleged abduction team in coordination with the arresting team, is necessitated. In this background, both the parties were given a chance to present their case in detail to the aforesaid extent.

ARGUMENTS FROM THE PETITIONER SIDE

It is contended by learned counsel for the petitioner that as the contents of representation dated 03.02.2022 disclose commission of cognizable offences and in view of the judgment of Hon'ble Apex Court in "**Lalita Kumari vs Govt. of U.P. & ors.**, reported as AIR 2014 SC 187", for the purpose of registration of FIR, petitioner is required to prove his case prima facie only. Canvassing the case of petitioner based on the aforesaid proposition and also to establish the same through his presence in Court premises at the relevant point of time on 07.01.2022, learned counsel relies upon affidavit dated 07.01.2022 (P-44, at page 50), got notarized by petitioner from Mr. Malook Chand, Notary Public, District Courts, Chandigarh. Learned counsel further refers to an affidavit dated 15.02.2022 of one Mithlesh Jha (P-59 at page 181), to support her contention while stating that Mithlesh Jha was also present in the Court premises along with the petitioner. In addition, learned counsel also refers to the CDRs pertaining to mobile No.7681901181 (in the name of one Paramjit Singh, which was admittedly being used by the petitioner on 07.01.2022) between

CRM-M-2046-2021(O&M) and others

10:24:43 am to 10:27:04 am, showing the tower location of Sector 43, District Courts Complex, Chandigarh.

As regards the tower location of the mobile numbers used by petitioner, one belonging to Pargat Singh and other of Paramjit Singh, it has been pointed out that the tower location of mobile number of Pargat Singh (7973362281) (internal Page 26 of short reply in CRM-37716-2022) at about 13:43 pm (roughly) was of Sector 44, Chandigarh and the tower location of mobile number of Paramjit Singh (7681901181) was of District Courts, Chandigarh between 10:24 am to 10:27 am (roughly). While referring to the tower location of mobile number of Vikas Hooda, a member of the alleged abduction team, it has been pointed out that single mobile is being used by him and the tower location of the same between 10:07 am to 10:44 am (roughly) was Sector 42, Chandigarh (at page 132) which includes Court premises, whereas it went off at about 10:44 am and switched on at around 06:28 pm. Similarly, the mobile of Anil Kumar at 05:48 pm (roughly) shows the tower location of Sector 43, District Courts, Chandigarh which went switched off at about 12:28 pm and was switched on at about 04:41 pm (roughly). Besides it, the mobile phone used by Subhash got switched off at about 10:24 am and was switched on at around 05:53 pm and the tower locations again is of ISBT, Sector 43, Chandigarh between 05:53 pm to 06:06 pm (roughly).

It has also been pointed out that the call detail records were produced before the Court on 25.01.2022 and while hearing the matter on 27.01.2022, this Court granted permission to both the

CRM-M-2046-2021(O&M) and others

parties to apply to the Registry of this Court for inspecting the same. As per the records (referred to at the time of hearing), an inspection was carried out by the petitioner on 10.02.2022 and only thereafter, the petitioner was able to get the CDRs of the members of alleged abducting team; whereas the petitioner in his representation dated 03.02.2022 which he forwarded through proper channel while being in custody, categorically and specifically mentioned the route/ location of the alleged abducting team members. While referring to the above, learned counsel points out that in case, the petitioner was not with the members of the abducting team, he would not have been able to provide the details of their route or locations in his representation dated 03.03.2022 while the CDRs were provided to the petitioner only on 10.02.2022 i.e. after a period of almost 07 days.

With respect to CCTV footage, learned counsel for the petitioner contends that an application bearing CRM-6413-2022, was filed by the petitioner for a direction to preserve the CCTV footage for the route specified by him on the day of incident and this Court vide orders dated 13.01.2022 and 17.02.2022 directed accordingly. Learned counsel submits that despite there being clear and specific directions by this Court, CCTV footage of all the relevant cameras was never preserved and provided. She further submits that contradictory affidavits were filed regarding CCTV footage as in affidavit dated 23.02.2022 by Sushil Kumar, System Officer, it was mentioned that many of the cameras belong to the police department, on the other hand in affidavit of Inspector Roop Lal, Incharge Police Post, District

CRM-M-2046-2021(O&M) and others

Court Premises, Sector 43, Chandigarh, it was stated that there was no police camera on the specified route.

In addition to the alleged incident which took place on 07.01.2022, learned counsel argues that not only the conduct of the abducting police officials; but also the conduct of higher police officials those who filed affidavits in this case on different occasions, also remained biased and lacked fairness. On all these counts, she submits that in view of the interim protection provided by this Court vide order dated 05.01.2022, the act of police officials on 07.01.2022 amounts to abduction of the petitioner and, therefore, this case demands fair, impartial and independent investigation by a technically equipped team. She further adds that representation dated 03.02.2022, sent to senior police officials for registration of FIR, is already pending with the respondents and therefore, this Court, can *suo moto* exercise its powers under Section 482 of Cr.P.C. and order the registration of an FIR. She also submits that investigation be entrusted to an independent agency which is not under the control of police of UT Chandigarh, as the alleged accused in this case are police officials, so as to ensure its fairness and impartiality.

ARGUMENTS FROM THE RESPONDENTS SIDE

On the other hand, while opposing the prayer and drawing attention of this Court towards the conduct of the petitioner, learned counsel representing the respondents, Mr. Anil Mehta, Senior Standing Counsel, UT assisted by Mr. C.S. Bakshi, APP submits that the petitioner failed to appear before the Court in pursuance to the interim order dated 05.01.2022 passed by this Court was deliberate so

CRM-M-2046-2021(O&M) and others

as to create the plea of alibi. He further submits that in the facts and circumstances of the case, conduct of the petitioner as well as his alleged friend, namely, Mithlesh Jha was completely unnatural as no complaint was ever made by Mithlesh Jha either to the Court concerned or to the Police Post stationed within the Court Premises, Sector 43, District Courts, Chandigarh. While referring to the repeated notices served upon the petitioner by the police officials, calling upon him to join the inquiry proceedings, learned counsel for the petitioner submits that the petitioner always remained in the habit of avoiding the inquiry proceedings as well as the joining of investigation despite having been directed to do so by this Court vide order dated 05.01.2022. While referring to contents of order dated 05.01.2022 passed by this Court, learned counsel for the respondents again points out to certain observations made therein, wherein the non-filing of an application by the petitioner against the investigating authorities for not permitting him to join investigation for long period was critically noticed.

Learned counsel has also taken this Court through the mobile tower locations of the individuals i.e. the petitioner and police officials, namely, Constable Vikas Hooda, HC Anil Kumar, Amitoj, later found ASI Ajmer and Constable Subhash Kumar, of Crime Branch, UT Chandigarh, those who allegedly abducted the petitioner. It has been pointed out that the tower locations of the petitioner who was admittedly using mobile number of Paramjit Singh at the relevant point in time, between 10:25 to 10:27 am on 07.01.2022 (roughly) was of District Courts Premises, Sector 43, Chandigarh, whereas thereafter,

CRM-M-2046-2021(O&M) and others

between 12:52 pm to 03:35 pm (roughly), the same was of Sector 44, Chandigarh. As regards the other mobile number being used by the petitioner which belonged to Pargat Singh, it was pointed out that between 01:43 pm to 05:24 pm (roughly), the same was again showing its tower location of Sector 44.

As compared to the above, learned counsel points out that the tower location of most of the mobile numbers being used by the alleged abducting team members was of Sector 42, Chandigarh for most of the day after 10:00 am (roughly) except the tower location of second mobile number (9416864804) of Anil Kumar at around 05:48 pm (roughly) being of ISBT, Sector 43, Chandigarh. Similarly, the tower location of second mobile number (7015152407) used by Subhash at around 10:23 am (roughly) shows the tower location of Sector 42-C, Chandigarh; whereas it went switched off thereafter and at around 05:53 pm (roughly) in the evening it showed tower location of ISBT, Sector 43, Chandigarh.

In addition, as regards the tower location of the mobile number used by Vikas Hooda, it has been pointed out that he was using only one mobile No. 9056501010 which showed the tower location of Sector 42, Chandigarh at around 10:07 AM (roughly) which went switched off at around 10:44 am (roughly) and thereafter on being switched on, it showed the tower location of Sector 35, Chandigarh at about 06:28 pm (roughly). Similarly, about the tower location of Ajmer Singh, it was pointed out that between 10:30 am to 06:29 pm (roughly), the tower location remained constant of Sector

CRM-M-2046-2021(O&M) and others

42-C, Chandigarh, which includes District Court premises, Sector 43, Chandigarh.

In view of the past conduct of the petitioner and mismatching of CDRs locations of the accused police officials with the location of the petitioner, on the date of incident, learned counsel submits that no *prima facie* case was made out for issuance of direction for registration of FIR. One another objection was also taken by counsel for the respondents to the effect that in the present petition which was filed under Section 438 of the Cr.P.C. for grant of anticipatory bail and particularly, when there was no pleadings regarding registration of FIR, issuance of any such direction was not called for and petitioner in any case was having an alternative remedy under Section 156 (3) Cr.P.C. to approach the Magistrate as held by Hon'ble Apex Court in "**Sakiri Vasu v. State of U.P.**" reported as (2008) 2 SCC 409.

OBSERVATIONS:

I have heard learned counsel for the parties and with their able assistance, also gone through the paper-book and affidavits filed in this case. It would be appropriate to make it clear at the first instance only, that at this stage, this Court, upon appreciation of material available on record is inclined to make a *prima facie* view only. Learned counsel for the respondents has tried tooth and nail to explain the circumstances as on the date of incident i.e. on 07.01.2022, however, after carefully examining the arguments and material on record, I am of considered opinion that this case requires efficient and effective investigation upon registration of FIR. There are

CRM-M-2046-2021(O&M) and others

many unanswered questions and suspicious circumstances, which have to be corroborated or dispelled, on the basis of evidences in the form of call records/ testimonies/ CCTV footages/ other electronic records and documents after thorough and detailed scientific investigation assisted by technical and domain experts. Some of the questions of noticeable scale which this Court could not keep a blind eye to, having bothered to reach the aforesaid conclusion are very briefly and categorically mentioned as under:-

- i) the route which has been given by the petitioner in his representation dated 03.02.2022, while he was in jail and was not in knowledge of call details records of the alleged accused police officials, substantially matches the locations of accused police officials as per CDRs made available to him on 10.02.2022.
- ii) It is the conceded case of the respondents that the team led by Inspector Harinder Singh Sekhon consisting of Sub Inspector Suresh Kumar and Senior Constable Neeraj throughout remained in the District Court Complex, Sector 43, Chandigarh, from 10.00 am till around 05.00 pm in the evening, waiting for the petitioner to join the investigation; whereas at around 03:41 pm and 04:54 pm, the mobile tower location of Neeraj (at internal pages 68-69 short reply by way of affidavit in CRM-37716-2022), reflects Sector 44, which is also the tower location of mobile of petitioner at the relevant time. This *prima facie* shows that both the teams were in active coordination.

CRM-M-2046-2021(O&M) and others

Rather, there appears something more to it and that's why two teams were deployed as they wanted to project differently in Court, otherwise same team would have nabbed the petitioner which eventually arrested him in the evening after waiting for him throughout the day in Court.

- iii) Similarly, from annexure R-86, which has been produced on record by respondents vide CRM-9720-2023, it can be found out from a conjoint reading of page Nos. 20, 23, 33, 39, 43 and 49 that even the location of mobiles of the members of arresting team i.e. Harinder Singh Sekhon, Neeraj besides one Pavan Kumar also showed tower locations of Sector 44, Chandigarh at few times which is same as the mobile tower location of petitioner, at different points in time during the day i.e. on 07.01.2022 between 01:30 pm to 05:45 pm (roughly).
- iv) Further, it is also a matter of investigation that whether the mobile phones of the alleged accused police officials who belong to Crime Branch, U.T. Chandigarh, remained unusually switched off for long on account of a reasonable cause or there was some unexplained motive behind the same.
- v) The mobile tower locations of both the phones admittedly being used by the petitioner were constantly showing tower location of Sector 44, Chandigarh, throughout the relevant period and in this situation, the plea of respondents that the petitioner was evading service, appears to

be farce as in case he intended to avoid his arrest or appearance in the Court, it was highly improbable that he would have continued to roam around in the nearby locality.

- vi) When in view of the order dated 05.01.2022, petitioner was given last opportunity to join the investigation, there appears no reason for him to evade the proceedings before Illaqa Magistrate on 07.01.2022 and roam around in nearby sectors, particularly when admittedly in the morning at about 10:24 am, his mobile tower location shows him to be present within the premises of District Courts, Sector 43, Chandigarh.
- vii) From CDRs of the accused police officials, as well as the petitioner, this fact is apparent that at about 10:24 a.m. in the morning location of all the persons is within or around District Court Complex, Sector 43, Chandigarh, and in the evening at around 6:20 p.m., location is around ISBT, Sector 43, which cannot be a mere coincidence.
- viii) Petitioner has been able to provide quite a few very particular details like the man who notarized his affidavits can be seen in the CCTV footage with white handkerchief, registration number of the car make Hyundai I-20 sports, in which the petitioner was allegedly abducted was being driven by Constable Vikas Hooda and also a specific dental issue being faced by said Constable, which is difficult to be provided in a cooked up case.

CRM-M-2046-2021(O&M) and others

- ix) Why the petitioner would switch off his phones for a substantially long duration, that too at a critical time when he is going to join the investigation and close relatives are expected to call. Rather, it has been alleged by the petitioner that the phones of the petitioner were in possession of alleged abducting police team and they were handling (switching on and off) his phones as per their motives.

The circumstances explained hereinabove, may not be treated as an expression of opinion on merits of the controversy in hand as the same have been recorded only for the purposes of forming a *prima facie* opinion so as to ascertain in the facts and circumstances and the material available on record as to whether the same require comprehensive investigation.

On the point of projected doubts created by the respondents on account of improved version in the story put-forth by the petitioner on subsequent dates, it may be pointed out here that the petitioner was taken into custody on 07.01.2022 and was produced before the Illaqa Magistrate on 08.01.2022 and 15.01.2022. During the short span of his production before the Court, whatever he could convey to his counsel was presented before this Court by way of CRM-M-2568-202 filed on 25.01.2022; whereas a detailed representation giving the entire sequence and complete facts was later moved by the petitioner on 03.02.2022 through proper channel from the jail and thus at this stage, this also cannot be a ground of

CRM-M-2046-2021(O&M) and others

substantive consideration for the purpose of disbelieving the story put forth by the petitioner at this stage.

Admittedly, even the case of petitioner is not rock solid and he also has many questions to answer like why Mithilesh Jha did not approach the police or QRT team available at the spot and why he did not inform the relatives of the petitioner first, as his location till evening appeared to be in Phase 6, Mohali, still at this stage only a prima facie case has to be seen; rather than insisting upon the proof with mathematical certainty from the petitioner. With respect to inconsistencies pointed out by learned respondent counsel regarding tower locations of petitioner in comparison to the police officials, learned counsel for the petitioner explains that mobile tower has a range of around 300-400 meters and connections of different telecom companies could show slightly different location of a nearby area and it is for this reason only, that petitioner has been pressing hard for the Geo Satellite location of all the concerned devices, through which exact location of a device can be known. In any case, at this stage, this cannot be the sole ground to dispel the entire allegations raised against the police officials as the falsity of those can be ascertained during the investigation, whereas on the contrary, it also calls for deeper technical investigation with telecom companies (of the concerned mobile phones) and technical companies like Google/Apple etc. for geo-sat locations of all the persons, including the arresting team, at the relevant period of time.

INAPPROPRIATE CONDUCT OF RESPONDENTS

Apart from this, sight cannot also be lost of the fact that the proceedings in this case have itself been privy to the conduct of respondents, which has not been above board. On several occasions, this Court refrained itself from exercising its contempt jurisdiction just to avoid the already muddled water in the case. Sometimes information as mentioned in the affidavit was not provided or misleading affidavits were filed and at some other instances, inconsistent information surfaced from these affidavits. Few of the occasions are as under:-

CONTRADICTORY AFFIDAVITS

From the perusal of orders dated 13.01.2022 and 17.02.2022, one can easily trace out that a specific direction was issued to have CCTV footage of all cameras installed within the Court premises and to preserve those, which particularly shows the entry and exit gate of the Court premises and the cameras installed on the route as projected by the petitioner in the layout plan/ site plan placed on record (at page 61 along with CRM-6413-2022). However, for the reasons best known to the authorities concerned, the CCTV footage of only 07 cameras installed by the office of District & Sessions Judge, Chandigarh were provided to this Court while withholding the CCTV footage of the cameras belonging to the Police Department as well as District Bar Association, Chandigarh, besides those even pertaining to State Bank of India Branch, though installed within the Court compound of District Courts, Sector 43, Chandigarh.

CRM-M-2046-2021(O&M) and others

Inconsistent stance as regards the installation of Cameras (on the route projected by the petitioner) can be found from the successive affidavits dated 22.02.2022 and 23.02.2022 filed in this regard by Inspector Roop Lal, Incharge Chowki, District Court Complex, Sector 43, Chandigarh and Sushil Kumar, System Officer, District Courts Complex, Sector 43, Chandigarh, respectively. In his affidavit, Sushil Kumar, points out that majority of Cameras, as shown in the photographs placed on record of this Court belongs to Police Department, while few others belong to District Bar Association, Chandigarh, whereas in the affidavit of Inspector Roop Lal, he categorically states that no CCTV camera, covering the route mentioned in the site plan, belongs to Police Department. It shows that an attempt was made at the instance of respondents for with-holding the CCTV footage of all the cameras belonging to the police Department as well as District Bar Association and this also speaks volumes about the conduct of the respondents. Further, order dated 17.02.2022 was merely an explanation to order dated 05.02.2022, but till then respondents were in a comfortable position to claim that the data can be stored only for a period of 07 days.

INFORMATION STATED IN THE AFFIDAVITS NOT PRESENT:

In affidavit dated 22.02.2022, SP Crime Branch, U.T., Chandigarh also annexed a communication as Annexure R-1 (at page 528 of the paper book), wherein, it was also categorically mentioned that in compliance of direction dated 17.02.2022 passed by this Court, the CDRs and geo satellite locations of the coordinates of some of the police officials were being provided to the Court and even this Court

CRM-M-2046-2021(O&M) and others

was made to presume that the call detail records and geo satellite location were duly provided at the instance of respondents-investigating agency as has been clearly recorded in the order dated 24.02.2022. The relevant portion therefrom is reproduced hereunder:-

“Alongwith the affidavit, mobile call details records obtained from the mobile companies concerned and the geo-sat location co-ordinates of Head Constable Anil, Constable Vikas Hooda and Constable Subhash have been annexed in a sealed cover.

The said call details records and the geo-sat location having been provided upon a direction issued by this court on allegations made by the petitioner, I see no reason to keep them in a sealed cover, as the petitioner would be entitled, in the opinion of this court, to see them, whether or not the allegations are proved or disproved by such data.

Consequently, the documents have been de-sealed by this court and are ordered to be taken on record as Annexure R-1 with the said affidavit, with the Registry to do the needful.”

However, when the petitioner sought information from the Registry of this Court, it was found that information regarding Geo Satellite locations was not annexed with the affidavit and to obtain this, he moved an application bearing CRM-37716-2022 dated 27.09.2022, for issuance of a direction to the respondents for preservation as well as supply of Geo Satellite locations along with call data records duly certified by the Nodal Officer of the Mobile Companies. It was specifically stated by the applicant that the office of Registrar General of this Court was unable to provide the requisite documents as ordered by this Court on 24.02.2022.

CRM-M-2046-2021(O&M) and others

When the aforesaid application was taken up for hearing on 12.10.2022 and notice thereupon was issued to the respondents, reply to it was filed by way of affidavit dated 20.10.2022 and in the same again the factum of handing over all detail of records and the Geo Satellite Locations Coordinators to the petitioner was reiterated (in para 3 thereof). However, on 05.01.2023, when the matter was taken up by this Court, non-supply of Geo Satellite Locations information was admitted on account of a bonafide communication and a request was made for compliance of order dated 17.02.2022 with a further assurance that the said information shall be provided within a period of two weeks' from today. Subsequently, vide comprehensive affidavit dated 14.02.2023; referring to the communications with the mobile companies, it was pointed out that the Geo Sat Locations was never generated/ stored and thus, could not be provided, though a mention about some efforts being made to extract similar and related information from the Internet Companies i.e. Google India and Apple India has been stated in the aforementioned affidavit.

A perusal of the sequence of events as narrated hereinabove shows that not only the respondents filed inconsistent affidavits before this Court; but also appears that there have been efforts to delay and divert the proceedings so that the desired information cannot be recovered from the mobile/ internet companies as the relevant data of only last 02 years is stored by the Companies in pursuance to the terms of the license agreement.

CRM-M-2046-2021(O&M) and others

It is also relevant to mention here that initially even the CDRs data was not provided by the respondents in original form as received from the mobile companies; but rather it was provided in their own format; whereas the 12 digit alpha numeric code which contained the address of nearby mobile tower providing network to the mobile number concerned was missing.

LEGAL PREMISE

Contention raised by learned counsel for the respondents that even there is no prayer to this effect in the pleadings by the petitioner is only partly true. Though, there is no such prayer in the original petition for registration of FIR; but in the application bearing CRM-10766-2022, a prayer substantially seeking the same relief has been made. On a specific query that why no action has been taken by the respondents on the representation of the petitioner dated 03.02.2022, a feeble attempt has been made to explain that matter being sub-judice before this Court, thus the same has been kept pending. This Court finds no substance in this explanation, rather, if appropriate action/ investigation would have been initiated, this Court would not have been burdened to take up this issue.

With respect to the argument of learned counsel of respondents regarding non-pleadings of any such prayer and alternate remedy under Section 156(3) of Cr.P.C., while this is admitted that under ordinary circumstances, this Court would have directed the petitioner to approach and raise his grievance before the Magistrate, but in the peculiar facts and circumstances of the present case, this Court is compelled to order investigation on the basis of

CRM-M-2046-2021(O&M) and others

representation made by the petitioner way-back on 03.02.2022 by registering an FIR.

My aforesaid view is derived from the judgment of Hon'ble Supreme Court in "**National Confederation of Officers Association of Central Public Sector Enterprises and others Vs. UOI and ors.**" reported as [2021] 10 S.C.R. 899, wherein, relying upon **Lalita Kumari's** case (supra) it has been observed that if a cognizable offence is disclosed from a complaint, it is a duty of the police officials to register an FIR and there is no bar on the constitutional power of the Court to direct the registration of FIR.

Even a Full Bench of this Court in case bearing CRM-28947-2017, tilted as **Suman Vs. State of Haryana and others**, decided on 15.09.2017, ordered registration of FIR and investigation by constituting a SIT, considering the seriousness of the offences, pertaining to leakage of question paper in HCS (Judicial Branch) Examination. A coordinate Bench of this Court in case titled as "**Mandeep Singh vs State of Punjab & others**" bearing CRM-M No.24578 of 2022 decided on 13.6.2022, after traversing through catena of judgments while holding that though this Court cannot decide the manner of Investigation, but in appropriate cases, investigation can be ordered by this Court exercising its powers under Section 482 Cr.P.C.

A perusal of the aforementioned judgments would clearly establish that in appropriate cases, it is open to the High Court to give directions for prompt and proper, untrammelled investigation under Section 482 Cr.P.C.

CRM-M-2046-2021(O&M) and others

Further, in case “**Pankaj Kumar @ Panki Vs. State of Punjab and others**” (CRM-M-16013-2020), this Court while discussing the scope and purview of power of High Court under Section 482 Cr.P.C. also held that this power can be exercised *suo moto* as well, and consequently, in a petition filed under Section 439 Cr.P.C. for grant of regular bail, Hon'ble Court quashed the instructions dated 04.05.2017 as it found them against the cardinal principles of administration of criminal law.

At this stage, it would be apposite to take note of the argument by learned Counsel of petitioner that when allegations are against the top level police officers of UT Chandigarh, Investigation should be conducted by an independent agency which is not privy to the dispute and, therefore, a SIT needs to be constituted to ensure fair and independent investigation.

In my considered opinion, this submission holds substance and even Hon'ble Apex Court in case titled as “**Mohammed Anis vs Union Of India**” reported as 1994 SCC, Suppl. (1) 145 held as under:-

“5. ... Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to the public interest as well as the interest of justice. This Court was careful enough to state that its order should not be read as a reflection on either the local police or the State Government but that it was actuated by the sole object of ensuring that the outcome of the investigation, whatever it be, is not suspect in the eyes of the people including the family members of those killed in the incident....”

CRM-M-2046-2021(O&M) and others

Relying on the above mentioned judgment, Hon'ble Apex Court in "**Dinubhai Boghabhai Solanki vs State of Gujarat & Ors**" bearing Criminal Appeal No. 492 of 2014, upheld the direction of CBI investigation by Madhya Pradesh High Court.

ORDER REGARDING CONSTITUTION OF SIT

Therefore, considering the fact that this case not only has the potential to shake the confidence of the common man in the administration of justice; but if incidents as alleged by the petitioner are found to be true, the conduct of police officials would amount to subverting the course of justice by causing interference in the implementation of the orders passed by the Courts. Based on the material on record not being *prima facie* improbable or irrelevant, the same in case taken to be at its face value becomes satisfactory enough to constitute cognizable offence so as to direct the registration of FIR and investigation thereupon. Therefore, exceptional circumstances of this case warrant investigation to be carried out by constituting a SIT headed by an officer not below the rank of SSP outside UT Chandigarh, after registration of an FIR on the basis of representation submitted by the petitioner on 03.02.2022, including the conducts of arresting team whether it was acting in concatenation with abducting team.

In any case, it is said that Caesar's wife should be above suspicion, which augers well in the present case. Statutory authorities, which are entrusted and involved with the administration of justice being above board, have to stand on a higher pedestal with sterling integrity so as to dispel any doubt regarding their conduct. In addition

CRM-M-2046-2021(O&M) and others

to this, rights of the petitioner for fair investigation as enshrined under Article 21 of Constitution of India, strengthens the requirement of free, fair, independent and impartial investigation.

Accordingly, in the facts of the present case, being an independent and impartial authority, DGP, Punjab is requested to constitute a SIT within a period of one week from today, headed by an officer not below the rank of SSP, assisted by some technical experts in telecom domain, to investigate in the matter and submit its final report to the Court concerned. The Registry to inform DGP, Punjab, regarding the aforesaid directions, immediately.

It is further requested that SIT (to be constituted) shall make sincere efforts to get the data preserved as ordered by this Court on 17.02.2022 and 05.01.2023.

At this stage, it has been pointed out by learned Senior Standing counsel, UT Chandigarh that on the aforesaid compliant dated 03.02.2022 sent by the petitioner to the Illaqa Magistrate from jail, based on the statement made by petitioner, the JMIC, Chanidgarh, vide order dated 18.01.2023 has issued directions for treating the same as a petition under Section 156 (3) Cr.P.C. followed by another order dated 15.02.2023; whereby report has been called from the concerned Police Station.

Faced with the submissions and counter-submissions by both the parties, this Court requested the Registry to summon for the original record of the proceedings pending before the Court of learned JMIC, Chandigarh through special messenger and the matter was again taken up at 4:30 pm on receipt of the records.

CRM-M-2046-2021(O&M) and others

Having heard both the parties, though I find that the pendency of proceedings before the JMIC were required to be brought to the notice of this Court, however, upon perusal of all the orders passed by JMIC, Chandigarh as well as in view of the facts of the case as discussed earlier and to meet the ends of justice, investigation by an independent agency not under the control of UT police is necessary. As there are direct allegations against the local police officers/ officials, to pass such an order is beyond the purview of learned Trial Court under Section 156 (3) Cr.P.C. and therefore, direction regarding the constitution of SIT as specified above holds good, as the technicalities are to pave way for the substantial justice.

For further consideration, to come up on 18.04.2023.

The original records received from the Court of JMIC, Chandigarh be returned immediately to the special messenger.

A photocopy of this order be placed on the files of other connected cases.

03.03.2023
sanjay

(**HARKESH MANUJA**)
JUDGE