

IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

W.P /No. _____/2020

PETITIONER: Deepak Bundela

Versus

RESPONDENTS : State of M.P & Others.

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Place : Jabalpur, M.P
Dated :

(Ehtesham Hashmi)
Counsel for Applicant

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PRINCIPAL SEAT AT JABALPUR

W.P /No. _____/2020

PETITIONER: Deepak Bundela

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RESPONDENTS : State of M.P & Ors.

LIST AND DATES OF EVENTS

<u>Date</u>	<u>Events</u>
22-03-2020	That in light of the COVID-19 Pandemic on the request of the Honorable Prime Minister Janta Curfew was Observed in Betul District.
23-03-2020	Section 144 of the Code of Criminal Procedure was imposed in the Betul District by the Order of the Executive Magistrate.
23-03-2020	The Petitioner in the present matter was stopped on his way to the Betul District Hospital and was abused and beaten up by the respondent and the mob of Police personnel.
24-03-2020	The Petitioner gave information through a written complaint about the incident that took place on 23-03-2020 in form of an application seeking enquiry and investigation of the police personnel involved to the D.S. Bhadauria, Superintendent of Police, Betul, Respondent No. herein

27-03-2020	The Petitioner wrote an e-mail to D.S. Bhadauria, Superintendent of Police, Betul, Respondent No. herein, urging to preserve the videotape of the incident of assault on the Petitioner dated 23-03-2020 in the interest of justice.
-03-2020	That the Petitioner filed an Right to Information application to the Public Information Officer seeking information about the Video Footage of the incident of assault on the Petitioner on 23-03-2020. The copies of the application has been also provided to Director General of Police, Respondent No, and Executive Magistrate, District Betul, Respondent No. .
27-03-2020	That the Petitioner being disturbed by assault on him on 23-03-2020 and moved by watching various video where police personnel beating the citizens in the lockdown, wrote an email regarding the same and made a request to eliminate the inhuman atrocities being committed by the police department to D.S. Bhadauria, Superintendent of Police, Betul, Respondent No.
17-05-2020	That B.S. Patel Souni Respondent No. and Raghuvanshi Respondent No, came to record Petitioners statement with respect to the written complaint and application submitted by the Petitioner to the Respondent No. on 24-03-2020. During which the keep on trying to manipulate, pressure and threatened the petitioner to withdraw his complaint.
	The Petitioner gave a written complaint about the incident of manipulation and threatening by the Respondent No. & to Respondent No. and also sent the copies to IG Hoshangabad Range, Chief Minister, State Human Rights Commission Madhya Pradesh, State Bar Council Madhya Pradesh, Bar Association of India, District Bar Association, and Honorable Chief Justice of the Supreme Court of India

Place : Jabalpur, M.P

Dated :

(Ehtesham Hashmi)
Counsel for Applicant

IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

W.P /No. _____/2020

PETITIONER : Deepak Bundela

RESPONDENTS : 1. State of M.P, Through the Principal
Secretary Home (Police) Department
Vallabh Bhawan Bhopal (M.P)
2. Kapil Saurashtra
3. D.S. Bhadauria
4. B. S Patel Souni
5. Raghuvanshi

WRIT PETITION UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA

A. PARTICULARS OF THE CAUSE/ORDER AGAINST WHICH THE
PETITION IS MADE

- a.) Date of order : Nil
b.) Passed in : Nil
c.) Passed by : Nil
d.) Subject Matter in Brief

By way of this instant petition, the Petitioner is not challenging any particular order but his grievance is relating to the respondents, as they are not taking appropriate action against the respondents.

That the Petitioner been an acute diabetic and blood pressure patient for the past 13 years and is dependent on medicines for maintaining is health. That on March 23 the Petitioner was not feeling well, so he decided to visit the hospital and get his medicines,

on March 23 between 5.30 and 6 pm, the Petitioner was on his way to the hospital when he was stopped by the police personnel who is Respondent No.2. On March 23 Section 144 had been imposed in Betul district by the orders of Executive Magistrate.

That when the Petitioner insisted on going to the hospital Respondent No. started beating him, seeing that the mob of police personnel present at the Lalli chowk started beating the Petitioners along with the Respondent No.2.

That despite being repeatedly told by the Petitioner that he is an advocate knowing the intricacies of the law and reminding the police personnel to be in the constitutional limits, the respondent verbally abused the Petitioner and the constitution of India and continued beating the Petitioner. When the Petitioner told that he will recourse to legal action the police personnel in fear of the consequences let him go.

That because of the merciless beating by the police personnel and the Respondent No.2 the Petitioners was grievously hurt and suffered serious injuries on various part of his body.

That the Petitioner informed the Superintendent of Police, District Betul D.S. Bhadouria, Respondent No.3 about the incident in form of a written complaint .

That the police officials, Respondent No.4 & Respondent No.5 who came to the Petitioners residence to take his statement about the incident that took place on 23-03-2020, Instead of recording the statement of Petitioner, tried to manipulate the Petitioner by urging him to take back his complaint, they pleaded the Petitioner saying that the Respondent No.2 beat the Petitioner as he mistook the Petitioner as a Muslim, as the Respondent No. is a staunch Hindu

and hate Muslim, because of the appearance of Petitioner the respondent mistook him for a Muslim person and beat him.

That when the Petitioner refused to take back his complaint the Respondent No.4 & Respondent No.5 gave him threats that his life will be made miserable and he would not be able to practice law peacefully.

That the Petitioner has complaint about this incident to the Superintendent of Police, Betul district and sent the copies to DIG, Police, IG Police, District Bar Association, National Human Right Commission and to the Chief Justice of the Honourable Supreme Court of India.

B. A DECLARATION THAT NO PROCEEDING ON THE SAME SUBJECT MATTER HAS BEEN PREVIOUSLY INSTITUTED IN ANY COURT, AUTHORITY OR TRIBUNAL.

The Petitioner declares that no proceeding on the same subject matter has been previously instituted in any Court/Tribunal.

C. DETAILS OF REMEDIES EXHAUSTED

The Petitioner declares that there is no other efficacious alternative remedy available to him.

D. DELAY, IF ANY IN FILING THE PETITION AND EXPLANATION THEREOF :

The Petitioner declares that there is no delay in filing the present writ petition.

E. FACTS OF THE CASE

1. That in light of the rapid spread of COVID-19 Pandemic, Janta Curfew was observed throughout the country on the insistence of the Honorable Prime Minister Shri Narendra Modi on 22-03-2020.
2. That by the order of the Executive Magistrate section 144 of the Code of Criminal Procedure was imposed in the entire Betul District as a precautionary measure in light of rapid increase in cases of COVID-19 in the state on 23-03-2020.
3. That the Petitioner been an acute diabetic and blood pressure patient since the past 13 years and is totally dependent on medicines for maintaining is health.
4. That on 23-03-2020 around 5 PM the Petitioner was stopped by the Respondent No.2 at Lalli Chowk, infront of Bikaner Mishthan Bhandar when the Petitioner was going to get himself treated at the Betul District Hospital as he was feeling sick.
5. That upon being held by the Respondent No.2 the Petitioner stated his purpose that he is unwell and is going to the hospital to get himself treated at the hospital and get the requisite medicine for himself, the Petitioner also mentioned to the respondent that he was feeling dizzy as he was being held at the spot after which Respondent No.2 started verbally abusing him.
6. That after the insistence of the Petitioner to go to Hospital to get treated, Respondent No.2 slapped the Petitioner and started beating the Petitioner meanwhile other police personnel stationed

at the Lalli Chowk joined in beating him, then the mob of police beat the Petitioner black and blue.

7. That the Petitioner urged the respondent and to stay in the constitutional limit upon hearing that the Respondent No. abused the constitution as well and continued beating him. Only when Petitioner mentioned that he is a practicing advocate and knew the law and he will complaint this matter to the appropriate authority the respondent and the mob of police stopped beating him.
8. That the Petitioner suffered several injuries and was grievously hurt due to the merciless beating meted out to him at the hands of Respondent No.2 and the mob of police. The medico legal report is annexed at annexure A (page no).
9. That the Petitioner on 24-03-2020 aggrieved by the assault on him by the Respondent No.2 and the mob of police, wrote a complaint to the Superintendent of the Police, Betul District who is Respondent No.3, Apprising him about the assault on the Petitioner on 23-03-2020 at the hands of Respondent No.2 and the mob of police as the assault constituted Cognizable offences such as Voluntary causing hurt, Voluntarily causing hurt by dangerous weapons or means, wrongful Restraint so FIR can be lodged. The Petitioner prayed that first information report under section 154 to be filed against the Respondent No.2 and strict and stringent action to be taken against all the persons involved in it.

10. That the assault on Petitioner by the respondent no and mob of police personnel constitute offence under section 323,324,341,293 and 506 of the Indian Penal Code and information regarding the same was provided to the Respondent No.3.
- 10 That the Petitioner wrote an email regarding the incident of assault on him to the Honorable Chief Justice of India apprising him of all the details about the incident of assault on 25-03-2020 and another email regarding the same to Madhya Pradesh Bar Association on 26-03-2020. The screenshots of the emails are annexed herein as Annexure B and Annexure C (Page No. to).
- 11 That the Petitioner gave a right to information application to the public information officer seeking the detail of the video footage of the assault on the Petitioner at Lalli Chowk in front of Bikaner Mishthan Bhandar that took place on 23-03-2020 a copy of which has also been provided to Respondent No.3 and Executive Magistrate, Betul District and the Petitioner also wrote an email on 27-03-2020 to the Respondent No.3 praying to secure and preserve the video footage.
- 12 That the Petitioner also wrote an email with respect to public perception of police in the recent time of the pandemic as various video of police brutality amid the lockdown has surface in public domain to the Respondent No.3.
- 13 That on 17-05-2020 upon the written complaint provided to Respondent No.3 on 24-03-2020 at the residence of the Petitioner

two police personnel came to record his statement, who are also Respondent No.4 and Respondent No.5.

14 That the Respondent No.4 and Respondent No.5 instead of recording the statement of Petitioner about the incident of assault on him, tried to cajole the Petitioner to take back his complaint with regards to the assault on the Petitioner on 23-03-2020 and against Respondent No.2 they tried to manipulate the Petitioner to go back on his stance and take back the complaint.

15 That the Respondent No.4 and Respondent No.5 tried with all their might to make the Petitioner to withdraw his complaint. they mentioned that the Respondent No.2 is in guilt because he beat the Petitioner after learning that Petitioner is a Hindu, the appearance of the Petitioner is such that he sports a long beard because of the appearance of that the Respondent No. mistook him for a Muslim man and beat him as Respondent No.2 is prejudiced against Muslims and hate them. They told the Petitioner that assault was a mistake on the part of the respondent and the police personnel who beat the Petitioner they thought that the Petitioner was a Muslim because of his beard they further told that that police generally support the Hindus in a situation of communal riots. The Petitioner clarified that there was no Hindu-Muslim riot in the city on 23-03-2020 and asked whether he was beaten for being wrongly identified as a Muslim. The Respondent No.4 and No.5 told the Petitioner that;

“Yes, exactly. You had a long beard. The man (who assaulted you) is a kattar (staunch) Hindu...In Hindu-Muslim riots whenever a Muslim is arrested, he beats them up brutally, always.”

The Petitioner has recorded the conversation between him and the Respondent No.4 and No.5 who came to take his statement. The transcription of the same is annexed herein at annexure (page no.)

16 That the Respondent No.4 & Respondent No.5 in the conversation told the Petitioner that:

“All those people are ashamed that they did something like this to a Hindu brother without knowing his identity. “We do not have any enmity against you. Whenever there is a Hindu-Muslim riot, police always supports the Hindus; even Muslims know this. But whatever happened with you was because of ignorance. For that, I have no words”.

17 That the respondents instead of recording the statement cajoled, tried to manipulate and coax the Petitioner to withdraw his complaint against the Respondent No.2 and the police personnel. When the Petitioner denied doing the same and insisted that his statement to be recorded in the Respondent No.4 and No.5 threatened that the non compliance of their request to the Petitioner will cause him misery and that he will not be able to peacefully practice law in the district. That they will frame the Petitioner and his brother in false cases and cause misery to them.

18 That the Petitioner has complaint about the abovementioned incident in detail to the Director General of Police Madhya Pradesh on 19-05-2020 and has also sent the copies to Inspector General Hoshangabad Range, Chief Minister of Madhya Pradesh, State Human Rights Commission Madhya Pradesh, State Bar Council Madhya Pradesh, Bar Association of India, District Bar Association, and also Hon'ble Chief Justice of the Supreme Court.

19 That at present no FIR has been registered against the Respondent No.2 and the police personnel involved in the assault on the Petitioner.

F. GROUNDS

A. BECAUSE the information given by the Petitioner through written complaint to the Respondent No.3 constitute cognizable offence and make out a case against the accused despite the respondent having being aware of the information and not registering the FIR against the respondent who beat the Petitioner the is against the mandate of the law of the land and omission of duty, as the FIR is still not registered despite the complaint disclose that the incident of assault constitute cognizable offence and the respondent was made aware of the information regarding the incident of assault on Petitioner at the earliest instance.

B. Because registration of FIR on receiving the information is the mandate of the law, Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation and that the investigating officer is duty bound to register the FIR. The Honorable Supreme Court of India

in the matter of **Anju Chaudhary v State of Uttar Pradesh and Anr, (2013) 6 SCC 384**, hold that;

“Section 154 of the Code places an unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith.”

C. BECAUSE the objective of FIR is to set the criminal law in motion, the non registration of FIR against the respondent in the present matter is delaying the justice to the Petitioner and his right to legal remedy is being denied, thus this petition is being filed. The honourable Supreme Court of India in **Lalita Kumari vs Govt. of Uttar Pradesh, [W.P.(Crl) No; 68/2008]**, gave the following guidelines with respect to registration of FIR;

- (i) It is mandatory under section 154 of the Code to get a FIR registered, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- (ii) A preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not, in case the information received does not disclose a cognizable offence but indicates the necessity for an inquiry,
- (iii) FIR must be registered, if the inquiry discloses the commission of a cognizable offence copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week in cases where preliminary inquiry ends in closing the complaint. Reasons must be disclosed and stated in brief for the complaint being closed and not being proceeded further.

- (iv) No police officer can avoid his duty of registering offence if cognizable offence has been committed and is hence disclosed. Strict steps must be taken against erring officers who do not register the FIR in case of cognizable offences.
- (v) The scope of preliminary inquiry is only to ascertain whether the information reveals any cognizable offence and not to verify the veracity of the information received.
- (vi) The category of cases in which preliminary inquiry may be made are as under-
 - (a) Cases of Matrimonial disputes family disputes
 - (b) Matters of Commercial offences
 - (c) Cases involving medical negligence.
 - (d) Matters of Corruption cases
 - (e) Abnormal delayed cases where in initiating criminal prosecution, for example, over 3 months have already passed.The above are non-exhaustive conditions.
- (vii) A preliminary inquiry should be made time bound and in any case it should not exceed 7 days while ensuring and protecting the rights of the accused and the complainant. Any reason or fact of such delay must be reflected in the General Diary entry.
- (viii) It is a mandatory practice as directed by the Supreme Court that since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, all information relating to cognizable offences, either resulting in registration of FIR or leading to an inquiry, must be meticulously reflected in the diary, no matter even if it is a preliminary inquiry.

That the omission on the part of Respondent No.3 to register the First Information Report is disregards to the mandate of the Supreme court in the abovementioned judgment as well as of the duty obligated by statutory law. The delay in investigation and registering the FIR would inure to the benefit of accused and

would violate the right of Petitioner to get justice against the brutality unleashed on him

- D. Because Right to life guaranteed under article 21 of the constitution of India is sacrosanct. If this right is affected in any manner and crime is committed by a person, it is the sacred duty of police to register the crime and investigate. On their failure in performing statutory duties, to enforce his right, the complainant is entitled to invoke jurisdiction of this Court under Article 226 of the Constitution of India.
- E. BECAUSE the fundamental right of the Petitioner guaranteed by the constitution of India has been violated by the respondent, the police as an instrumentality of the state have the duty to uphold constitutional values and the constitution of India and in no circumstance it can transgress it. The state cannot misuse the sovereign and statutory powers at his disposal to his wince and fancies; the respondent beat the Petitioner out of his prejudice to a Muslims and their religion, the respondent mistook Petitioner as a Muslim because of the appearance of Petitioner (Sporting Long Beard) and his malice toward Muslims and Islam rather than his duty. The act of the respondent is a violation of Article 15 (1) of the constitution of India and abuse of the constitutional values of equality and fairness.
- F. BECAUSE the Petitioner has right to live his life with dignity and respect and shall have pursuit to live a healthy life. That the freedom of movement of the Petitioner was infringed by the actions of the respondent when he was stopped and was not being allowed to go to Hospital for his medical check up, the act of the respondent was wrongful restraint of the Petitioner movement. Though section 144 was enforce but there was no restriction and curfew on the individual movement and the essential supplies

were available, that despite the details provided with regard to the health condition of the Petitioner was wrongfully restrained.

G. BECAUSE there has been attempt to threaten the petitioner to take back his complaint by the respondent no.4& no.5 which is an attempt to destruction of evidence related to the incident, there is threat to destruction of evidence by the respondents and threat to life and limb of the petitioner.

H. BECAUSE there has been growing incidents of police brutality in the state and country and with the facts it is clear that there is communal elements present in the police force, police force as an instrumentality of state has to uphold the constitutional values and discrimination on the basis of religion by the police is against the mandate of the constitution of India, under no circumstance state instrumentality can not violate article 15 that is guaranteed by the Constitution of India. The honourable Supreme Court Of India in the case of ***Prakash Singh & Ors vs Union Of India And Ors (Police Reforms Case). Case Number, Writ Petition (civil) 310 of 1996,*** framed guidelines regarding Police Complaint authority to be instituted in every state at district levels which are as follows;

- i) State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country.
- ii) Selection and Minimum Tenure of DGP: To be selected by the state government from amongst Top 3 senior-most officers of the Department. He/She should have a minimum

tenure of at least two years irrespective of his date of superannuation.

- iii) Minimum Tenure of I.G. of Police & other officers: Prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them.
- iv) Separation of Investigation department: To ensure speedier investigation, better expertise and improved rapport with the people ensuring full coordination between two wings.
- v) Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters: Comprising the Director General of Police and four other senior officers of the Department.
- vi) Police Complaints Authority at the district level: To look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Also at a state level to look into complaints against officers of the rank of Superintendent of Police and above.
- vii) Central Government shall also set up a National Security Commission: To prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. Further to review and upgrade the working of forces and to provide recommendations.

PRAYER:

In view of the abovementioned facts and circumstances and in the interest of justice, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) That this Hon'ble Court may kindly be pleased to Issue an appropriate Writ, order or direction in the nature of Mandamus

directing Respondents No. to register the First Information Report.

- b) That this Hon'ble Court may kindly be pleased to direct Respondents No. may be examined and adequate enquiry may be held.
- c) That this Hon'ble Court may kindly be pleased to direct Respondents No. to provide for the police protection to the Petitioner and counsels of Petitioner.
- d) That this Hon'ble Court may kindly be pleased to direct Respondents No. to pay damages to the Petitioners including the cost of litigation.
- e) That this Hon'ble Court may kindly be pleased to direct Respondents No. to constitute a committee addressing the concern of communalism in the police force.
- f) That this Hon'ble Court may kindly be pleased to direct Respondents No. to constitute police complaint authority in the state.
- g) Pass any such other order(s) or direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case;

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

1. **INTERIM ORDER/WRIT, IF PRAYED FOR :-**

NIL

2. **DOCUMENTS RELIED ON BUT NOT IN POSSESSION OF THE PETITIONER**

3. **CAVEAT**

That, no notice of lodging a caveat by the opposite party is received.

An affidavit in support is filed here with.

Place : Jabalpur

Ehtesham Hashmi

Dated :

(Advocate for Petitioner)

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PRINCIPAL SEAT AT JABALPUR
W.P /No. _____/2020

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AFFIDAVIT

I, Deepak Bundele,

, do hereby swear and state on oath as

under: -

1. That, I am the Petitioner in the instant case and I am as such fully aware conversant with the facts of the case.
2. That, the contents of the accompanying Petition from para 1 to , have been drafted by my counsel as per my instructions and are true to my personal knowledge and believe based on the official records and I have understood the same .
3. Contents of the Annexures filed with the application are true to personal knowledge and belief based on the official records and I have understood the same.

VERIFICATION

I, Deepak Bundele, the above-named deponent, do hereby verify that the contents of paragraph 1 to 3 above, are true and correct to my personal knowledge.

Verified and signed on this day of , 2020 at Jabalpur.

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PETITIONER:

Deepak Bundele

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RESPONDENTS :

State of M.P & Ors.

LIST OF DOCUMENTS

S.no.	Description of Documents	Original/Copy	No. of Pages
1.			
2.			
3.			
4.			

Place : Jabalpur

Ehtesham Hashmi

Dated :

(Advocate for Petitioner)