

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th NOVEMBER, 2021

IN THE MATTER OF:

+ **W.P.(CRL) 1079/2021 & CRL.M.A. 8751/2021**

MISS J THROUGH HER MOTHER & ANR Petitioners

Through: Mr. Abhishek Anand, Advocate

versus

COMMISSIONER OF POLICE & ORS Respondents

Through: Mr. Rajesh Mahajan, ASC for the
State with Ms. Jyoti Babbar,
Advocate with W/SI Sapna Sharma,
PS Ranhola

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This writ petition under Article 226/227 of the Constitution of India has been filed with the following prayers:-

“A. Pass an order directing the respondent-Commissioner of Police (Delhi) to provide protection to Miss J and Miss C; and to ensure that nobody shall threaten Miss J, Miss C and her family members.

B. Pass an order directing the respondent-Commissioner of Police (Delhi) to take disciplinary action against Ms. Sapna Sharma, Women SI, working at Ranhola Police Station for no doing fair investigation and for threatening Miss J, Miss C and her family members.

C. Pass an order directing the respondent-Commissioner of Police (Delhi) to lodge an FIR under section 166A/503 IPC, against Ms.Sapna Sharma, Women SI, working at Ranhola Police Station for no doing fair investigation and for threatening Miss J, Miss C and her family members.

D. Pass an order directing the respondent-Commissioner of Police (Delhi) to change the Investigating Officer (i.e., Ms. Sapna Sharma) in relation to investigation of the FIR No. 65/2021, and to appoint another impartial, credible and child friendly investigating officer. E. Pass an order directing the respondent-Commissioner of Police (Delhi) to ensure fair, impartial and child friendly investigation in present case.

F. Pass an order directing the respondent to provide compensation of amount not less than Rs. 10,00,000/- (ten lakhs only) each in the favour of minor rape victims, Miss J and Miss C as per the "Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018.

G. Pass an order directing the respondent authorities to take appropriate action to ensure a governmental jobs/employment for Miss J and Miss C when she will become major.

H. Pass an order directing the respondent authorities to provide monetary compensation to Miss J and Miss C for violation of their fundamental rights.

I. Pass any such directions or order which this Hon'ble court deems fit and proper in the facts and circumstances of the above mentioned case."

2. The facts leading to this petition emanate from FIR No.65/2021 dated 05.02.2021 registered at Police Station Ranhola for an offence under Section 363 IPC, whereby a missing report was filed by the Mother of the victim and the instant FIR was registered.

(i) It is stated by the complainant that her younger daughter Miss J aged about 15 years had left their home on 04.02.2021 at about 9:00 AM stating that she is going to get biscuits.

(ii) It is stated that on 05.02.2021, Miss J called her mother that she is in Ghaziabad. The mother of the petitioner approached the Police and the

Police recovered Miss J. Later the complainant in her Section 161 statement revealed that she realised that her second daughter Miss C was also missing and later found out that she had been kidnapped and raped.

(iii) SI Sapna Sharma, Investigating Officer was appointed to investigate the case. On 05.02.2021, Investigating Officer recorded Section 161 CrPC of the alleged victims. After recovering Miss J was produced before the Child Welfare Committee details of the place she had been kidnapped from were ascertained from the victim. The complainant's statement was also recorded under Section 161 CrPC wherein she stated that she has three daughters and one of them was in office and two have been kidnapped, molested and raped. She gave their ages to be 17 years and 15 years, whereas the I.O. independently verified the ages and found the age of Miss J to be 17 years and 4 months and Miss C to be 19 years and 5 months.

(iv) She stated that one Mr. Sunil Gupta, who their neighbour was responsible for this acts committed against the modesty of her daughter.

(v) Further, during investigation, the CCTV footages were retrieved and it was seen thereof which showed that on 04.02.2021 Miss J at about 9 AM, along with her elder sister R were leaving their home.

(vi) Miss C was seen in the CCTV footage shortly thereafter leaving home. The CDR records of the accused persons were analysed and CDR of the victims was also analysed. It was found on a comparative reading of the CDRs that the accused Mr. Sunil Gupta was present in Delhi and was on duty in his office and his location was verified as per the CDR and independently verified from the superior of the accused at his workplace. It was found during investigation that the victims were not actually in

Delhi and were in Ludhiana. After it was brought to light that the CDR of the victims were traced in Ludhiana, the S.I. conduct the further investigation at Ludhiana.

(vii) It was found that Miss J and her sister Miss C were staying in a hotel Park Blue opposite Dhyan Singh Complex in Ludhiana and were accompanied by their two friends, namely, Zahid and Vikas Singh Chandel. The CCTV footage of the hotel where the victims CDR was traced to was checked and their presence was seen in the camera and their names were recorded in the guest register and entries were made by the victims giving fictitious names. When the police tried to locate the boys who allegedly accompanied the victims to Ludhiana, namely Zahid Qureshi and Vikas Singh Chandel, they found that Vikas Singh Chandel had gone abroad to pursue higher studies and Zahid Qureshi did not join investigation despite several efforts whereafter Section 82 CrPC proceedings were commenced against Zahid Qureshi.

(viii) The statement of victims J and C were recorded under Section 164 CrPC before the learned Metropolitan Magistrate in the presence of the Investigating Officer, SI Sapna Sharma on 06.04.2021.

(ix) In her Section 164 CrPC statement, Miss J had stated that on the morning of 04.02.2021, she went out of her house at around 9 AM to get biscuits where she was accosted by the alleged accused Sunil Gupta and his wife who she states forcibly dragged her into a four wheeler and took her to desolate place. She has stated that Sunil Gupta and his wife disrobed her in the van and touched her private parts. It further states that she was taken to a unknown dark room where a boy unknown to her raped her and, thereafter she was raped by two more boys. She states that two

persons allegedly at the behest of accused Sunil Gupta raped her and she states that the next day i.e. on 05.02.2021 she was raped again and she started bleeding from her private parts. She was then, she states, dropped to an unknown place in the middle of agricultural field. She states that she requested for help from bystander to make a phone call she called her mother and stated what had transpired.

(x) It is stated that she was recovered by police officials of Bhajanpura Police Station and then taken to Ranhola Police Station whereafter she was taken for a medical examination to DDU hospital. She gave a number of description of the clothes worn by her abuser and stated that she could identify him if he came in front of her.

(xi) In her Section 164 CrPC statement, it is stated that her sister was also raped and made to drink acid. Furthermore, she stated that if anything untoward happens to her or any of her family members, the family of Sunil Gupta will be solely responsible for that.

3. The present petition has been filed with multiple and omnibus prayers, namely, the S.I. to whom the case was assigned should be changed; disciplinary action should be taken against the S.I. for conducting investigation in an unfair and prejudiced manner; The case FIR No.65/2021 dated 05.02.2021 at Police Station Ranhola to direct the instant FIR to be placed before the Commissioner of Police who should appoint a new I.O. to conduct a *de novo* investigation; Pass an order directing the State to pay a compensation of Rs.10,00,000/- to the victims; direct the State to provide government employment to the victims on their attainment of majority.

4. Mr. Abhishek Anand, learned counsel for the petitioner submits that the Sub-Inspector in charge of the investigation of this case came to the victim's house and threatened the victim and her parents stating that they have filed a baseless case and that they should withdraw this case and this incident recurred multiple times. It is stated that SI Sapana Sharma and other officers came in plain clothes to the house. It is stated that on 27.05.2021, the petitioner's lawyer sent representation to several authorities complaining about the conduct of the S.I. for not conducting a fair investigation given the severity of the allegations involving two minors. Learned counsel for the petitioner places reliance on the judgment passed by the Supreme Court in Babubhai v. State of Gujarat, (2010) 12 SCC 254 and Nirmal Singh Kahlon v. State of Punjab & Ors., (2009) 1 SCC 441 to demonstrate that investigation was not done transparently as expounded by the Supreme Court in these judgments.

5. *Per contra*, Mr. Rajesh Mahajan, learned ASC at the outset states that the present case is nothing but a dispute between the family of the victims and alleged accused Sunil Gupta and that a plethora of cross-cases have been registered by both the parties, the same has been reproduced hereinbelow:-

"Cases registered by complainant "M" & her family against their neighbours

S.No.	FIR No. Date	Under Section	PS	Status of case
1.	16/2009 Dt.12.10.09	323, 325, 34 IPC	Ranhola	Pending Trial

2.	410/2014 Dt.06.06.14.	354A, 506, 34 IPC	Ranhola	Case disposed Acquitted
3.	614/2017 Dt.09.09.17	452, 324, 380, 34 IPC	Ranhola	Pending Trial
4.	711/2017 Dt.18.10.17	323, 341, 506, 34 IPC	Ranhola	Pending Trial
5.	850/2017 Dt.14.12.17	324, 34 IPC	Ranhola	Pending Trial
6.	13/2018 Dt.07.01.18	323, 341, 34 IPC	Ranhola	Pending Trial
7.	375/18	323, 341, 506, 34 IPC	Najafgarh	Pending Trial
8.	400/18	363, 376D, 326A, 307, 34 IPC	Najafgarh	Pending Trial
9.	426/2018 Dt.12.06.18	323, 341, 506, 34 IPC	Ranhola	Pending Trial
10.	429/2018 Dt.13.06.18	380, 427 IPC	Ranhola	Intraced report
11.	65/19	363 IPC & 8 POCSO Act	Najafgarh	Pending Trial
12.	497/19	341, 506, 509, 34 IPC	Najafgarh	Pending Trial
13.	705/2020 Dt.10.07.2020	354D, 509 IPC	Ranhola	Intraced report
14.	258/21 Dt.11.06.2021	376, 506 IPC	Dwarka South	Pending Trial

Cases registered against complainant & her family

S.No.	FIR No. Date	Under Section	PS	Status of case
1.	802/2017 Dt.16.11.17	451, 323, 354, 354B, 506, 509, 34 IPC	Ranhola	Pending Trial
2.	12/2018 Dt.07.01.2018	323, 341, 34 IPC	Ranhola	Pending Investigation
3.	425/2018 Dt.12.06.18	323, 341, 506, 34 IPC	Ranhola	Pending Investigation
4.	892/2020	323, 354, 376D, 506, 195A, 34 IPC	Ranhola	Pending Trial

6. Mr. Rajesh Mahajan, learned ASC submits that the petitioners were seen leaving their home at around 9:00 AM in the CCTV footage installed in the locality and the CDRs of the petitioners were analysed and it was found that they were in continuous touch with the complainant and her husband i.e. their parents on 04.02.2021 and 05.02.2021. It is contended by the learned ASC that the accused Sunil Gupta was on duty at his workplace and letter of the company was issued to justify this fact. He also contends that the petitioner were not actually kidnapped and on their free will went to Ludhiana, accompanied by two of their male friends, namely, Zahid Qureshi and Vikas Singh Chandel. He further contends that the hotel where the victims were at the time of alleged incident was contacted and the investigating authority checked the CCTV footage, guests' entry register, the victims registered their fictitious names and their two male friends who accompanied them registered their correct names. He submits that all this

stand corroborated and verified by the fact that the petitioners social media profiles. He states that there was activity on their social media profiles and they uploaded photographs with their male friends on 04.02.2021 showing their current location to be in Ludhiana. It is also stated that the conductor of the bus has stated that the girls boarded the bus from Delhi to Ludhiana on 04.02.2021 and they reboarded from Ludhiana on 05.02.2021. He stated that Miss J de-boarded at Ghaziabad.

7. Heard Mr. Abhishek Anand, learned counsel for the petitioner and Mr. Rajesh Mahajan, learned ASC for the State and perused the material on record.

8. Chargesheet stands filed on 22.10.2021. Supplementary chargesheet has also been filed and charges are yet to be framed. The genesis of this case levels extraordinarily serious and concerning allegations. The offences alleged are of Section 363, 376 IPC read with Section 6 and 8 of the POCSO Act. This Court, in this observation, is only confining itself to the materials which have been placed on record and refrains from expressing its opinion on the merits of this case. A careful perusal of the material on record indicates that there have been numerous FIRs and cross-FIRs between the family of the victims and accused Sunil Gupta and his family. It appears that both families have been inimical towards each other. Without conclusively ascertaining and only for purpose of the present proceedings, there appears to be a contradiction between the statements of the victim and the material on record. From the material placed before this Court, it is seen that accused Sunil Gupta was present in Delhi at the Chief Engineers Office at Police Headquarters from 2:35 PM till 4:00 PM and his wife Sunita Devi, was also seen in a CCTV footage at the Health Centre at Mohalla Clinic on

04.02.2021 at about 4 PM. It is noted that photographs from the CCTV footage show that the victims were at Hotel Park Blue, Ludhiana with some boys. Further, it appears that Miss J and her sister uploaded photographs to their social media handles with their male friends, which belies the case of abduction and rape.

9. After perusing the material placed on record and a holistic understanding of the sequence of events bolstered by the fact that a family feud has been simmering for a long period of time, this Court is of the opinion that investigation has been done in a fair manner. It appears to this Court that the family of the petitioners is using the present proceedings as an apparatus for attempting to suborn and exert pressure on the police to investigate and deal with other cases in a particular manner. The instant petition is a ruse to arm-twist the Policemen. The petitioners have not made out any case for directing the Commissioner of Police (Delhi) to take disciplinary action against Ms. Sapna Sharma, Women SI, working at Ranhola Police Station for not doing fair investigation and for threatening Miss J, Miss C and her family members. The petitioner has also not made out any case to directed the Commissioner of Police (Delhi) to lodge an FIR under section 166A/503 IPC against Ms. Sapna Sharma, Women SI, working at Ranhola Police Station for not discharging her duties in a fair and impartial manner. The petitioner has not made out any case for directing the respondent to provide compensation of Rs. 10,00,000/- each to Miss J and Miss C as per the “*Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018*”. Needless to state that the prayer for directing the concerned authorities to provide governmental jobs/employment to Miss J and Miss C when they become major cannot be

granted in this petition as there is no right of the petitioner to ask for the same nor is there any right for granting any monetary compensation to the petitioner and her sister.

10. Be it noted that all these observations have been made only for the purpose of the present writ petition. The Trial Court is directed to not be influenced by any of the observations made by this Court while dealing with the merits of the case. It is always open for the Trial Court to exercise the powers under Section 319 Cr.P.C. at any stage of the Trial in case some material surfaces against any other person.

11. It is the duty of the State to provide protection to every citizen of the country but at the same time this Court has to ensure that frivolous petitions, which are filed only to interfere with the investigation and to arm twist the Police officers, ought not to be entertained.

12. With these observations, the writ petition is disposed of.

NOVEMBER 30, 2021

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SUBRAMONIUM PRASAD, J