



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous Application No. 246/2023

Tikam Khandelwal S/o Shri Mohan Khandelwal

----Petitioner

Versus

State Of Rajasthan

----Respondent

For Petitioner(s) : Mr. V.R. Bajwa, Sr. Advocate with
Ms. Mahi Yadav,
Mr. Amar Singh

For Respondent(s) : Mr. Babulal Nasuna, PP

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

05/10/2023

1. The petitioner is informant of the following six FIRs:-

- (i) FIR No. 270/2017 registered with Jawahar Circle, Police Station Jaipur for the offences under Sections 406, 420, 467, 468, 471 and 120B IPC.
- (ii) FIR No. 262/2017 registered at Vaishali Nagar Police Station, Jaipur for the offences under Sections 379, 406, 420, 467, 468 and 120B IPC..
- (iii) FIR No. 700/2017 registered with Vaishali Nagar Police Station, Jaipur
- (iv) FIR No. 439/2018 registered with Vaishali Nagar Police Station, Jaipur.
- (v) FIR No. 56/2018 registered with Jothwara Police Station, Jaipur for the offences under Sections 379, 420, 406 and 120B IPC.
- (vi) FIR No. 286/2017 registered with Vaishali Nagar, Police Station, Jaipur for the offences under Sections 406, 420, 467, 468, 471, 384 and 120B IPC.

2. The cases were being investigated by the respective Police Stations. It is alleged by the petitioner that the then ADGP of ATS/SOG was biased in favour of accused persons, hence he handed over the investigation of some of the FIRs to SOG and some others to ATS. Under influence of the ADGP, the SOG as well



as ATS submitted negative report in all the FIRs. The petitioner made representation to different authorities including the Home Minister, Government of Rajasthan and superior police officers for necessary direction for further investigation of the case. Accordingly, the investigation was transferred to Additional DCP (West), Jaipur under the order of the then DGP. The Additional DGP (West), Jaipur was investigating the case. In the meantime, the then ADGP of SOG and ATS assumed the office of DGP, Rajasthan. Thereafter, the ADGP called the entire records of the FIRs aforesaid and stayed the arrest of the accused persons of the case by his order dated 2.12.2022.

3. The petitioner filed S.B. Criminal Writ Petition No. 368/2023 with following prayers:

1. Quashing and setting aside the impugned order the impugned order dated 2.12.2022 (Annexure-9) passed by Additional Director General of Police, Crime Branch, Rajasthan;
2. directing the investigating agency to conduct further fair and forthright speedy investigation, so as to impart justice to the present petitioner;
3. To conduct further investigation under SIT headed by the learned Commissioner of Police, Rajasthan Police; and /or
4. To direct the respondents to conduct the investigation without undue influence of present DGP, who was previously hold the post of Additional Director General of Police (ADGP), ATS and SOG, Rajasthan and fascinatingly under whose instructions negative Final Report in the FIRs were given; and/or
5. Any other order or relief which this Hon'ble Court deems fit and proper may also be passed in favour of the petitioners."

4. Since lawyers were on strike, this Court by order dated 2.3.2023, disposed of the writ petition with direction to the petitioner to approach the Magistrate concerned for redressal of his grievance for fair investigation of the case. Thereafter, the petitioner filed S.B. Cr. Misc. Application No. 81/2023 making



details of the averments and claiming that since the aforesaid writ petition was disposed of without hearing the petitioner, it requires reconsideration. By order dated 12.5.2023, this Court quashed the order dated 2.12.2022 of the DGP on the ground that the order was a blanket order without any reason whereby called for the records of the investigation of the aforesaid FIR and stay of arrest of the accused persons. Thereafter by order dated 13.6.2023, under instructions of the DGP, the investigation was transferred to the Crime Branch.

5. Learned Senior counsel for the petitioner submits that the accused has no right or choice to ask for investigation of the case by particular agency as held in **Romila Thapar & Ors. Vs. Union of India & Ors. reported in (2018) 10 SCC 753**, wherein, the Hon'ble Supreme Court observed as follows:-

"30... it is clear that the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for Court monitored investigation".

6. Moreover, the narration of the facts of the case would reveal that the present DGP has bias in favour of accused persons of this case, hence he has transferred the investigation for the 4th time.

7. Learned Senior counsel for the petitioner contends that circular of the Home Department, Government of Rajasthan dated 3.8.2012 would show that there is instruction that before transfer of the investigation, the reason must be mentioned in the transfer order. The investigation cannot be transferred more than thrice. The present transfer order is 4th transfer order of investigation.

8. Learned Public Prosecutor has casually opposed the prayer of the petitioner.



9. Evidently, no reason has been assigned in the order dated 13.6.2023 except direction of the DGP for transfer of the investigation. The glaring thing is that progress report of the investigation has been called for. First progress report of the investigation has been called for within 7 years. Moreover, the administrative instruction has not been followed inasmuch as more than thrice transfer of investigation of the case was not permissible. Right of fair investigation and fair trial is fundamental right of the victim as well.

Considering the fact of the case, the impugned order dated 13.6.2023 stands hereby quashed and it is directed that the investigation of the above-referred 6 FIRs be immediately handed over to Additional DCP (West), Jaipur under supervision of Commissioner of Police, Jaipur.

10. The Investigating Officer is expected to conclude the investigation within two months thereafter submit a report to this Court.

11. A copy of this order be provided to learned Public Prosecutor to inform all concerned.

12. List on 12.12.2023.

(BIRENDRA KUMAR),J

BRIJ MOHAN GANDHI /77/1371

