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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRM-M-24936-2025**  
Reserved on: 19.08.2025  
Date of decision: 26.08.2025

TXXX

...Petitioner

Versus

STATE OF HARYANA

...Respondent

**CORAM: HON'BLE MS. JUSTICE KIRTI SINGH**

Argued by: Mr. Samay Sandhawalia, Advocate  
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

Mr. D.S. Matya, Advocate for accused-Shahid.

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**KIRTI SINGH, J.**

1. The prayer in the instant petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') is for re-investigation of the case arising out of FIR No.04, dated 12.01.2025, registered at Police Station Sohna, District Gurugram for offence under Sections 64(1), 351(2), 333, 3(5), 140(3), 115 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').

2. The facts in brief emerging from the instant FIR are that allegedly, on 12.01.2025, the petitioner-victim was sleeping in her house with her younger brother, aged around 9 years, when at about 01:00 a.m. Shahid, Khalid and Taufik entered her room and abducted her. Thereafter, she was taken to a nearby house, on the second floor of which Shahid committed sexual intercourse with her against her will, and the other two



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boys who were standing outside the room stated that now it was their turn. Later on, her family reached the place of occurrence, where her brother and mother were attacked by the accused, who then fled away from the spot. On these allegations the present FIR was lodged, and, the same is enumerated as below:-

*“To the SHO, P.S. Sadar Sohna, Sir, Respectfully submits that I, XXX d/o Sabdar Ali, am resident of Village Sancholi. On 12.01.2025 at around 1:00 AM, I was sleeping on a cot in my room and my brother was sleeping on the other cot, then suddenly my mouth was pressed and my eyes opened, I saw that Shahid s/o Gaffar had pressed my mouth and Khalid s/o Amru and Taufiq said that if I make any noise, they will kill me and my brothers and they put cloth in my mouth. They picked me up and took me to the second floor of a big house located at some distance away from our house. The owner of this house is Shaukat s/o Gaffar. Taking me to the room upstairs, at first, Shahid s/o Gaffar did wrong act with me against my consent and then Khalid s/o Amru and Taufiq s/o Amru said that now, it is their turn. When I started crying, they told me to keep quiet or else, they would kill me and throw me away. Shahid had just moved away after doing wrong act with me against my consent, then my brother Talim and my mother called out from downstairs that brother Shahid, has his sister come here? Shahid refused by saying she has not come here. Hearing this, my family members returned back. I started gasping for breath and Shahid removed the cloth from my mouth and said not to make noise or else, he would strangle me to death. After about 15-20 minutes, I heard voice of my family members came from downstairs that brother Shahid, please come with us to get our sister searched. Then I yelled at my brother and said, “Come upstairs, I have been locked up.” My brother climbed upstairs, but Khalid hit Danda on my brother's head, due to which, he suffered a deep injury on the head. Taufiq and Khalid kicked my mother and said, “Move aside or else, they will kill her.” I request you with folded hands that strict legal action be taken against said accused.”*

3. On the next day, the victim got recorded her statement under Section 183 of BNSS (Annexure P-2) before the learned Magistrate, wherein she reiterated the allegations. Subsequently, investigation in the instant FIR was carried out, and challan was presented only against accused Shahid, whereas, accused Taufiq and Khalid were declared innocent. Thereafter,



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cognizance was also taken only against accused Shahid. Aggrieved, the petitioner has approached this Court.

**Submissions made by learned counsel for the petitioner**

4. Learned counsel for the petitioner inter alia contends that the investigation in the aforesaid FIR has not been fair or complete. It is submitted that the prosecutrix, in the FIR and in her statement under Section 183 BNSS, consistently named Khalid and Taufiq and attributed specific roles to them, of being perpetrators of the sexual assault, and of attacking her brother. Her version stands corroborated by contemporaneous medical evidence (Annexure P-3) and also her FSL report (Annexure P-4), as per which semen was detected on the vaginal and cervical swabs, salwar of the prosecutrix and the bed-sheet recovered. Yet, the investigating agency, did not incorporate the relevant provisions of gang rape. Reliance is placed upon the judgment of Hon'ble Supreme Court passed in **Raju Umakant V/s The State of Madhya Pradesh, SLP (Criminal) No.17398 of 2024**, wherein it was observed that for an offence of gang rape, it is not necessary that penetration is to be done by all the accused, rather what is required is the common intention of all the accused to commit rape. Further, in filing the challan, the investigating agency arbitrarily declared Khalid and Taufiq innocent, without assigning any cogent reason. It is urged that such exoneration is the product of extraneous influence, considering the relationship of the said persons with the village sarpanch. He further submits that it is not in dispute that the petitioner and the main accused Shahid were known to each other and used to talk on mobile phone and text messages. However, mere communication would not give the accused any right to violate the person of the prosecutrix. Restricting his prayer, learned counsel



submits that the relief sought is confined to a direction for further investigation qua Khalid and Taufiq, who have been declared innocent, so that truth is brought before the trial Court. Reliance is also placed on the judgment of the Hon'ble Supreme Court in *Vinubhai Haribhai Malaviya and Ors. v. State of Gujarat and Anr.: (2019) 17 SCC 1*, wherein it was held that that the ultimate aim of investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed the crime are booked and those who have not, are not arraigned to face trial.

**Submissions made by learned State counsel**

5. Per contra, while opposing the present petition, learned State counsel submits that a thorough inquiry was carried out in the instant case. A bare perusal of the FUR dated 20.03.2025 filed before the learned trial Court reveals that during inspection of the place of alleged occurrence, a bed sheet was found, which was taken into possession vide a separate seizure memo, whereupon signatures of the witnesses were obtained. During investigation, on 13.01.2025 the medical examination of the prosecutrix was got conducted and samples so obtained were sent for forensic examination. Similarly, the medical examination of the brother of the prosecutrix was got conducted. The statement of the prosecutrix was also got recorded under Section 183 BNSS. Notice under Section 94 of BNSS was given to the prosecutrix to produce evidence relating to the FIR.

6. Further, learned State counsel by placing reliance upon the status report filed by way of affidavit of Mr. Vikas Arora, IPS, Commissioner of Police, Gurugram has submitted that the accused Shahid joined investigation on 04.03.2025 in pursuance of interim bail granted to him by learned Addl. Sessions Judge, Gurugram vide order dated

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27.02.2025. During investigation, he got demarcated the place of occurrence and recovered one iron lock used in the crime. His medico-legal examination was conducted and DNA samples were taken into police possession. The said DNA samples were sent to FSL Madhuban, on 10.03.2025, report of which is awaited. The final report mandated by the provisions of Section 193(3) of BNS for the commission of offence punishable under Sections 115, 333, 351(2), 64(1) of BNS has been submitted before the Court of competent jurisdiction on 25.03.2025 *qua* accused Shahid only with respect to the non-inclusion of the relevant provision at the time of registration of the FIR, it is further submitted that as per the report submitted by Deputy Commissioner of Police, Headquarters, Gurugram, the same for erroneously not done, for which a regular departmental inquiry has been ordered to be initiated.

7. Learned State counsel further submits that insofar as the question of exoneration of accused Khalid and Taufik is concerned, the same had been duly examined by the Commissioner of Police, Gurugram on the basis of the contents of investigation file as well as the report of the Deputy Commissioner of Police, Headquarters, Gurugram. It is submitted that the material on record reveals that in terms of case dairy No.18 dated 18.03.2025 the investigator of the case had associated as many as 20 persons from the vicinity of the place of occurrence and co-villagers, all of whom upon being thoroughly questioned, stated that accused Khalid and Taufik were not present at the time of occurrence and they had been attracted to the spot upon hearing the noises of the occurrence. They further asserted that accused Khalid and Taufik were not involved in the present case, and that they both had arrived at the spot after the occurrence. It is further submitted



that as per case diary No.19 dated 18.03.2025, the SHO, Police Station Sadar Sohna had also verified the facts from those persons and he did not find any person who could have vouched for the fact of participation of accused Khalid and Taufik and found that both of them are not involved in the crime and recommended to drop provisions of Section 140(3) and 3(5) of BNS. Learned State counsel has also highlighted material discrepancies in the FIR and the statements made by the prosecutrix at the time of her medical examination and in her statement recorded under Section 183 of BNS.

8. The statement made by the prosecutrix under Section 183 BNSS reads thus:-

*“On 12.1.2025 at about 1 am at night I was sleeping in my room along with me my younger brother Pasir aged 11-12 years was also sleeping. At that moment shahid khan brother of The sarpanch along with khalid and taufik came into my room. The room I was in does not have a lock. My mother was sleeping in the other room and they locked that room from outside. Shahid had pressed a cloth on my mouth and both the other 2 boys had caught me. They threatened me that if I raise noise then we'll kill your brother and family. They picked me up and hot me to the sarpanch office. Khalid and taufik waited outside and sahid khan did wrong act with me. 20-30 minutes' later my brother came looking for me and Shahid Khan told him don't come into my house at night. There was a cloth stuffed in my mother I could not speak anything. After that Shahid Khan attacked my brother with a stick because of which he got an injury on his head. Then taufik and khalid also recached there and made my brother run away. Then police report was done on number 112 and till then everyone has run away. Then later sarpanch and other people told my family that don't do police report take money from us. After that we came to police station and report lodged at about 4.”*

9. It is submitted that initially, in the complaint she asserted that she had been taken to the office by accused Khalid, Taufik and Shahid from

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the room in her house where her brother was also sleeping, on a separate cot, and had been thereafter raped by accused Shahid, whereafter accused Khalid and Taufik had asserted their turn to rape her. However, in her statement recorded under Section 183 BNSS, she asserted that accused Khalid and Taufik had been left out of the room, and made no assertion that there was any act on the part of accused Khalid and Taufik with regard to any criminal intimidation or assertion regarding their turn. Thus, he submits that upon consideration of all these facts, accused Khalid and Taufik have been exonerated, and challan was presented against accused Shahid.

**Submissions made on behalf of learned counsel for accused-Shahid**

10. Learned counsel for the accused-Shahid submits that once a final report under Section 173(2) Cr.P.C. has been filed, and cognizance taken, the sanctity of that report should not be lightly disturbed; only in the *rarest of rare* cases should further investigation be ordered. What is sought here is, in substance, a *re-investigation*, which is impermissible in law. Any such direction would unnecessarily delay the trial, defeating the accused's right to expeditious proceedings. It is further submitted that even otherwise, the case is now at the stage of prosecution evidence, and as such, an order for re-investigation at this stage cannot be sought.

**Inference of this Court**

11. I have heard the rival submissions made by both the parties and perused the relevant records with their able assistance.

12. It is settled law that a Magistrate, and by necessary implication the constitutional courts, possess the power to direct further investigation under Section 173(8) Cr.P.C., even after the filing of a police report. The Hon'ble Supreme Court in *Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762*, clearly observed that:



“43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

44. We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of the Magistrate under Section 228 of the Code. Wherever a charge sheet has been submitted to the court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the Court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in *Disha v. State of Gujarat*, *Vineet Narain v. Union of India*, *Union of India v. Sushil Kumar Modi* and *Rubabbuddin Sheikh v. State of Gujarat*.

45. The power to order/direct “reinvestigation” or “de novo” investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the court may, by declining to accept such a report, direct “further investigation”, or even on the basis of the record of the case and the documents annexed thereto, summon the accused.

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48. What ultimately is the aim or significance of the expression “fair and proper investigation” in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another



*agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.” (emphasis supplied)*

13. Reaffirming this position of law, the Hon’ble Supreme Court in ***Devendra Nath Singh vs. State of Bihar and Ors., Criminal Appeal No. 1768 of 2022, decided on 12.10.2022***, laid down the following principles:

*“13. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:*

*(a) The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.*

*(b) The powers of the Magistrate to ensure proper investigation in terms of Section 156 CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.*

*(c) Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8) CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8) CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.*

*(d) Even when the wide powers of the High Court in terms of Section 482 CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.*



*(e) The powers under Section 482 CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.”*

14. It is settled law that the Courts must not order further investigation or reinvestigation as a matter of routine, but must exercise such powers sparingly, and in exceptional cases, where is it evident that the investigation carried out in the case was patently arbitrary, unjustified, or actuated by mala fides. The twin test laid down by the Apex Court in the case of *Irshad Ali* (supra) viz, the investigation must be unbiased, honest, just and in accordance with law and secondly, the same must have been carried out with the objective of ascertaining and thereby placing before the concerned Court, the true factual dimension of the case, when satisfied, leaves minimum scope with the Courts to invoke their extra-ordinary powers and interfere with the investigation, much less quash the same.

15. Applying the foregoing position of law to the instant case, and on a cumulative conspectus of the material on record, it can be seen that the thorough investigation was carried out in the instant case. About 20 independent witnesses were joined in investigation, all of whom categorically stated that Khalid and Taufiq were not present on the spot at the time of the alleged occurrence, and that they had seen them arrive there after the commission of the alleged incident, upon hearing the voices. With



respect to the injuries suffered by the brother of the prosecutrix, a further perusal of the reply filed by the Commissioner of Police, Gurugram reveals that facts as narrated by the prosecutrix were duly considered, but certain material discrepancies were found therein- in her statement leading to the registration of the instant FIR, the petitioner had levelled specific allegations against the Khalid and Taufiq of abducting her and perpetrating the commission of the crime by accused Shahid. It was also mentioned therein that her brother had been attacked with a *danda* by Khalid, and her mother kicked by both Khalid and Taufiq. However, in her statement got recorded before the learned magistrate, the prosecutrix deposed that it was accused Shahid who had hit her brother. In the said response it has further been mentioned that even at the time of her medical examination, the prosecutrix only levelled allegations against accused Shahid. Further, no such assertion *qua* criminal intimidation by Khalid and Taufiq or any statement with regard to their intention, as narrated in the FIR, found mention in the statement of the prosecutrix under Section 183 BNSS. It was thus, that challan was presented in the instant case on 25.03.2025 under sections 115, 333, 351(2), 64(1) of BNS, 2023 only against accused Shahid, on the basis of the medical and forensic evidence available, and Khalid and Taufiq were declared innocent. Subsequently, cognizance was taken by the learned magistrate on the basis of the final report presented before it against accused Shahid.

16. Learned counsel for the petitioner has not been able to point out as to how, the investigation in the instant case was tainted with malafides, so as to warrant the exercise of its extraordinary jurisdiction by this Court. The mere assertion of being related to the Sarpanch of the village as a ground to seek re-investigation in the matter, without any material on record to

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establish as to how the same might have prejudiced the investigation, in not a tenable basis to order re-investigation or further investigation in the case. Even otherwise, it is open for the petitioner to avail alternate remedies in accordance with law.

17. Accordingly, the present petition, being sans merit, stands dismissed.

18. It may be observed that the discussion made hereinabove is strictly limited to the purpose of adjudicating the present petition. It is made clear that nothing mentioned hereinabove shall be construed as an expression on the merits of the case.

**August 26, 2025**

Ithlesh

**(KIRTI SINGH)  
JUDGE**

<b>Whether speaking/reasoned:-</b>	<b>Yes/No</b>
<b>Whether reportable:</b>	<b>Yes/No</b>