

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CrMMO No. : 726 of 2025****Reserved on : 05.08.2025****Decided on : 07.08.2025**

State of Himachal Pradesh

...Petitioner

Versus

Manav Sharma

...Respondent

*Coram***The Hon'ble Mr. Justice Virender Singh, Judge.***Whether approved for reporting?¹ Yes.*

For the petitioner: Mr. Tejasvi Sharma, Additional Advocate General, with Ms. Ranjna Patial, Deputy Advocate General, assisted by Dy.SP Manvinder Thakur, SI Jagat Ram, SHO and HC Baljit Kumar, Police Station Majra, District Sirmaur, H.P.

For the respondent: Mr. Sudhir Thakur and Mr. Anshul Bansal, Senior Advocates, with Mr. Adhiraj Thakur, Mr. Ankit Chandel, Mr. Somesh Sharma and Mr. Peeyush Dhanotia, Advocates.

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

Virender Singh, Judge.

State has filed the present petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'BNSS'), for setting aside orders, dated 1st July, 2025 and 4th July, 2025, passed by the Court of learned Judicial Magistrate First Class, Sirmaur at Nahan, District Sirmaur, H.P. (hereinafter referred to as 'the trial Court'), in case FIR No. 97/2025, dated 13th June, 2025 (hereinafter referred to as 'FIR in question'), registered under Sections 299, 132, 191 (2), 191 (3), 190, 351 (2), 115 (2), 121 (1), 109, 61 (2) of the Bharatiya Nyaya Sanhita (hereinafter referred to as 'BNS'), with Police Station Majra, District Sirmaur, H.P.

2. By way of the present petition, the following relief has been sought for:

"In view of the foregoing facts, it is humbly prayed that the orders dated 01.07.2025 and 04.07.2025 passed by Ld. JMFC Nahan, in FIR No. 97/2025 PS Majra be set aside and to expunge the adverse remarks made in the said orders against the SHO, PS Majra, and the Investigating Officer; with further prayer to grant police custody (remand) of accused Manav Sharma for a period as this Hon'ble Court may deem just and necessary in light of the fresh material; and pass such further orders as may be

deemed just and proper in the facts and circumstances of the case in the interest of justice.”

3. According to the petitioner, during the investigation of the FIR in question, one of the co-accused Raman Kumar made a disclosure statement, regarding recovery of weapons, including *gandasi* and sword and revealed that the *gandasi* was supplied to him by accused-Manav Sharma (respondent). In this regard, copy of the disclosure statement has been annexed with the petition, as Annexure P-1.

4. On the basis of the said information, the police moved a remand application, dated 1st July, 2025, seeking three days' custody of respondent-Manav Sharma, however, the said application has been dismissed by the learned trial Court, on 1st July, 2025, observing that the statement of co-accused was insufficient to grant remand, in the absence of any material and no new circumstance or change of circumstances has been mentioned, in the remand application.

5. It is the further case of the petitioner that during the course of investigation, one independent

witness came forward, giving a statement, under Section 180 of the BNSS, confirming that respondent-Manav Sharma had supplied weapons to the rioters. The statement of the said witness has also been annexed with the petition, as Annexure P-4.

6. As such, according to the petitioner, fresh application was moved before the learned trial Court, which was again heard and dismissed on 4th July, 2025. Not only this, the learned trial Court has also made certain adverse remarks against the SHO by branding the investigation as biased, malafide, reprehensible and directed the Director General of Police to take action.

7. The orders are stated to be not sustainable in the eyes of law, as, the statement of independent witness was recorded only after 1st July, 2025, and the learned trial Court has not appreciated the evidentiary value of the material, so collected, during the investigation.

8. On the basis of the above facts, a prayer has been made to allow the petition, as prayed for.

9. Alongwith the petition, the confessional statement, dated 30th June, 2025, made by one Raman

Kumar, under Section 23 (2) of the Bharatiya Sakshya Adhiniyam (hereinafter referred to as 'BSA') has also been placed on record, in which, said Raman Kumar has allegedly confessed that on 13th June, 2025, at Majra, during the day time, Manav Sharma handed over him *gandasi*, after taking out the same from the place, where there were a number of trees, and after inflicting the injury on the police official, he threw the same at Kiratpur and that he can get the same recovered.

10. The remand application, dated 1st July, 2025; statement of Kulwinder Singh @ Shenty, recorded under Section 180 of the BNSS, on 2nd July, 2025, and the remand application, dated 4th July, 2025 have also been annexed with the petition.

11. From the material placed on record, the following facts emerge:

11.1. On 13th June, 2025, HC Pradeep Kumar No. 209, was directed to visit Civil Hospital, Paonta Sahib and JC Juneja Hospital, to verify the factual position, as mentioned, in reports No. 38 and 39. In JC Juneja Hospital, HC Sandeep was found in injured condition.

Requisite forms were filled for his medico legal examination and MLC was obtained.

11.2. Thereafter, HC Pradeep Kumar No. 209, visited Civil Hospital Paonta Sahib, where ASI Ashish Kumar, was found admitted for treatment. MLC of SI Ashish Kumar was obtained. The Medical Officers of JC Juneja Hospital, and Civil Hospital, Paonta Sahib, declared the injuries on the person of HC Sandeep Kumar and ASI Ashish Kumar, as simple in nature.

11.3. Thereafter, ASI Ashish Kumar, Police Station Majra, District Sirmaur, got recorded his statement, under Section 173 of the BNSS to HC Pradeep Kumar No. 209, disclosing therein, that he is posted as I.O. in Police Station Majra.

11.4. On 10th June, 2025, a case FIR No. 95 of 2025, was registered, under Section 137(2) of the BNS, on the ground that one Muslim boy had enticed away a Hindu girl. In this context, on 13th June, 2025, in the morning, volunteers of Jagran Manch had gathered at Majra Chowk for demonstration.

11.5. The said mob was pacified by SDPO and Incharge, Police Station, Majra, however, the persons, who were demonstrating there, were again and again stressing that they will finish the person, who has enticed away the girl. Due to their activities, the police apprehended about the violence. As such, police force was requested to be deputed from Police Lines, Nahan and Paonta Sahib. Those policemen were deputed at the house of the main accused Mohseen Khan, in Village Kiratpur, in order to maintain law and order situation.

11.6. ASI Ashish Kumar further got recorded that he, along with other police officials, including HC Sandeep No. 512, LC Gurpreet Kaur No. 274, was also present there. At about 5.30 p.m., from Matak Majari side, the volunteers of Hindu Jagran Manch, including MLA Sukh Ram Chaudhary, MLA Rajeev Bindal, Manav Sharma, Sunit Gupta, Raj Kumar, Ashish Attri, Nand Lal, Indra, Alka, and other ladies and other persons on motorcycle, who were having *dandas* in their hands, were proceeding towards the house of Mohseen.

11.7. The Dy.SP, Paonta Sahib, had tried his level best to pacify them, but, they had not paid any heed to him. When, Dy.SP Paonta Sahib and SHO Majra were trying to pacify them, then, Manav Sharma and Sumit Gupta, who were also present in the said mob, were instigating the other persons, by saying that the police is not searching for the girl and that, they themselves have to finish the person, who has enticed away the said girl. Meanwhile, the mob became aggressive.

11.8. Thereafter, someone from the persons belonging to Muslim community had pelted a stone, due to which, tension arose between the two communities and they started pelting stones on each other and also beating each other with *dandas*. Meanwhile, some of the persons from the mob had also started pelting stones on the police.

11.9. Due to pelting of stones, complainant sustained injuries over his head and forehead. A person, out of the mob, had also hit HC Sandeep with a *danda* on his head. Consequently, he sustained injuries. Similarly, LC Gurpreet Kaur, No. 274 had also sustained injuries, which

were caused by the members of the mob. As such, a prayer has been made to take action.

11.10. After registration of the FIR, further investigation was entrusted to HC Pradeep Kumar No. 209. During investigation, on 14th June, 2025, HC Pradeep Kumar, No. 209, I.O. Police Station Majra, at the instance of complainant ASI Ashish Kumar, visited the spot and spot map was prepared. Statements of witnesses, under Section 180 of the BNSS, were recorded.

11.11. It has been found during the investigation that the agitated mob had prevented the police officials from performing their duties and beaten them. As such, Section 121 of the BNS was added, in this case. Thereafter, the investigation of the case was entrusted to SI/SHO Police Station, Majra.

11.12. On 14th June, 2025, accused-Sunit Gupta, Manav Sharma, Jai Prakash, and Raj Kumar, were associated in the investigation and on finding their involvement, they were arrested at about 7.30 p.m. Thereafter, they were produced before the Doctor for medico-legal examination and their MLCs were obtained.

11.13. It is further case of the police that out of the agitated mob, one person had inflicted *gandasi* blow on the head of HC Sandeep Kumar. Due to the said blow, the cap worn by HC Sandeep Kumar got cut and he also sustained deep injury over his head, which, as per MLC, is 7 x 2 cm long (elliptical shape).

11.14. It is the further case of the Police that had HC Sandeep Kumar not worn the cap, the said injury could have been dangerous to his life. As such, Section 109 of the BNS was added, in this case.

11.15. During the course of investigation, spot was also videographed. The accused persons, who were arrested, were produced before the Court of learned Judicial Magistrate First Class, Nahan, from where, they were remanded to police custody.

11.16. It is the further case of the police that on 16th June, 2025, C. Rijwan, Security Branch, Paonta Sahib, has produced the CD of videography and photographs. Those were analyzed minutely. One Sameer Khan, had also made available the footage of the CCTV camera installed in his house at Kiratpur, which was examined. The time of the

same was found to be 10 minutes ahead of the actual time and the date was found to be 16.6.2025.

11.17. As per the CCTV footage, on 13th June, 2025, at about 5.43.35 p.m., a suspicious person was noticed, who had worn black coloured T-shirt and black shorts. He was having *gandasa/farsa* in his right hand. He had muffled his face with white coloured cloth. The said person was found to be joining the mob. He was followed by another person, who was having *danda* in his right hand. The said person had also worn the same type of clothes. These persons were found to be moving from Fatehpur towards the house of Mohseen at Kiratpur. Few persons were noticed in the CCTV footage, who were having *dandas* in their hands. Manav Sharma, was also found to be in the mob at about 5.45.15 p.m. He had worn long white Kurta Pajama, and his tuft of hair was also visible. The said CCTV footage was preserved and submitted to the SI/SHO.

11.18. As per the statement of HC Sandeep Kumar, the said persons were found to be Manav Sharma, Sunit Gupta, Raj Kumar and Nand Lal. Those persons were seen with the aggressive mob.

11.19. It is the further case of the police that the attack on the police appears to be at the instance of these persons. It has also been mentioned that both the suspicious persons, shown in the photographs, were having the *danda*, *farsa/gandasa* and stones, in their hands.

11.20. The information of those two persons is stated to be in the knowledge of the above four accused persons, who were arrested. The incident is stated to be communal riots. According to the further stand of the police, had the police been not intervened, then, they may have instigated the mob and burnt the house of Mohseen.

11.21. Highlighting the role of accused-Manav Sharma, Jai Prakash @ Nand Lal, Raj Kumar and Sunit Gupta, it is the case of the police that the said persons had hatched conspiracy and instigated the mob to proceed towards the house of Mohseen and due to this instigation, mob reached at Fatehpur, where stones were pelted on the police. As per the stand taken by the police, since the above four persons were instigating the mob, to commit violence, Section 61(2) of the BNS was added, in this case.

11.22. As per the status report, the factum of tense situation in the area was apprised to District Magistrate, Sirmaur, so that the communal clashes may not occur. As such, District Magistrate, in order to maintain law and order situation, has imposed Section 163 BNSS, in some of the villages of Majra, till 26th June, 2025.

11.23. As per the stand of the police, on the basis of the CCTV footage, on 18th June, 2025, accused Solanki was identified. Search was made for him at Kala Amb area and he was enquired. As per the police, said accused Solanki, during the investigation, by the Police, disclosed that the person, who had muffled his face, is Raman Kumar, son of Veer Singh. The said Solanki was arrested on 18th June, 2025 and he was produced before the Court of learned Chief Judicial Magistrate, Nahan, from where, he was remanded to police custody for four days and thereafter, on 21st June, 2025, he was remanded to judicial custody.

11.24. As per the status report, the man with muffled face, who has attacked the police, has been identified as Raman Kumar and efforts were made to nab him. On 27th

June, 2025, on the basis of the status report, filed before this Court, the application filed by accused-Raman Kumar, for anticipatory bail, was rejected and he was taken into custody. According to the police, accused-Raman Kumar is still not disclosing the truth and recovery of *gandasa/farsa* and motorcycle is yet to be made from him.

11.25. During the course of investigation, it has been found that accused-Raj Kumar, alongwith his friends, accused-Manav Sharma, Sunit Gupta, Jai Prakash @ Nand Lal has instigated the mob leading to communal riots.

11.26. According to the police, accused-Raj Kumar, Sunit Gupta and Jai Prakash Pandey, alongwith their friend, accused-Manav Sharma, at the first instance, had instigated and encouraged the mob for communal riots.

12. The police has registered the case, under the provisions, as mentioned hereinabove. Since, the injury, has allegedly inflicted upon the police official, as such, provisions of Section 109 of the BNS, especially Part-II of the same, *prima facie* are found to be applicable, in the present case.

13. Respondent-Manav Sharma, as per the remand order, annexed with the petition, was arrested on 14th June, 2025. He was produced before the Court of learned Chief Judicial Magistrate, Nahan and was remanded to judicial custody till 27th June, 2025.

14. In this factual background, the first and foremost question, which arises for determination, before this Court is as to whether the requests for police remand, as moved on 1st July, 2025 and 4th July, 2025, which were rejected by the learned trial Court, are still available to the State or with the passage of time, the prayer for police remand now becomes infructuous.

15. In this regard, the provisions of Section 109 of the BNS, are reproduced, as under:

“109. Attempt to murder. - (1) Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

(2) When any person offending under sub-section (1) is under sentence of imprisonment

for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life."

16. Since, in this case, hurt has been caused, as such, the offenders can be liable either to imprisonment for life or to such punishment, as has been mentioned hereinbefore.

17. Similarly, the provisions of Section 187 of the BNSS, are reproduced, as under:

" 187. Procedure when investigation cannot be completed in twenty-four hours.

- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration the status of the accused person as to whether he is not released on bail or his bail has not been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole,

or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Judicial Magistrate having such jurisdiction.

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIV for the purposes of that Chapter.

(4) No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.

(5) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in sub-section (3), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under sub-section (4), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be:

Provided that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution:

Provided further that no person shall be detained otherwise than in police station under police custody or in prison under Judicial custody or place declared as prison by the Central Government or the State Government.

(6) Notwithstanding anything contained in sub-section (1) to sub-section (5), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate have been conferred, a copy of the entry in the diary hereinafter specified relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon

such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in sub-section (3):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(7) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(8) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(9) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the

investigation beyond the period of six months is necessary.

(10) Where any order stopping further investigation into an offence has been made under sub-section (9), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (9) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.”

(self emphasis supplied)

18. In view of sub-Section (2) of Section 187 of the BNSS, as reproduced hereinabove, to the considered opinion of this Court, the prayer of the police to seek the police remand still subsists.

19. Now, this Court would proceed further to ascertain as to whether the prayer for police remand has rightly been rejected by the learned trial Court, vide orders, dated 1st July, 2025 and 4th July, 2025 (orders impugned herein) and the same is sustainable in the eyes of law or not.

20. The police is investigating this case and after the arrest of respondent-Manav Sharma, when, he was produced before the Court, the police remand was also

sought, but, the same was given and he was remanded to judicial custody on 15th June, 2025. Thereafter, the police continued with the investigation of the case and subsequently, moved the application for police remand on 1st July, 2025, by specifically mentioning the fact that the place, where accused-Manav Sharma (respondent), as per the disclosure statement made by accused-Raman Sharma, had kept the weapons, is to be got identified from him and the matter is also required to be investigated, as to from where he has purchased the weapons, i.e. *gandasi* and swords.

21. Similarly, in the remand application, dated 4th July, 2025, the prayer for the police remand has been made on the basis of the fact that witness-Kulwinder Singh @ Shenty, in his statement, recorded under Section 180 of the BNSS, has named respondent-Manav Sharma as the person, who had allegedly told Kulwinder Singh @ Shenty, Solanky, Lokesh and Raman not to go to Kiratpur empty-handed, as, the persons at Kiratpur might be having weapons with them and also disclosed to him that he has

brought weapons for them, which, he allegedly had kept in a sack under the trees.

22. The purpose, for which, the police remand has been sought, has specifically been mentioned and to investigate the matter, is the sole prerogative of the police. The Court cannot issue direction to the police not to investigate the matter, in a particular manner.

23. The scope of investigation has elaborately been discussed by the Hon'ble Supreme Court in **H.N. Rishbud and another versus State of Delhi**, reported in **AIR 1955 Supreme Court 196**. Relevant para-5, of the judgment, is reproduced, as under:

"5. To determine the first question it is necessary to consider carefully both the language and scope of the section and the policy underlying it. As has been pointed out by Lord Campbell in - 'Liverpool Borough Bank v. Turner', (1861) 30 LJ Ch 379 (A), "there is no universal rule to aid in determining whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Court to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed". (See Craies on Statute Law, page 242, Fifth Edition).

The Criminal Procedure Code provides not merely for judicial enquiry into or trial of alleged offences but also for prior investigation

thereof. [Section 5](#) of the Code shows that all offences "shall be investigated, inquired into, tried and otherwise dealt with in accordance with the Code" (except in so far as any special enactment may provide otherwise). For the purposes of investigation offences are divided into two categories 'cognizable' and 'non-cognizable'. When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non-cognizable offence, he shall not investigate it without the order of a competent Magistrate.

Thus it may be seen that according to the scheme of the Code, investigation is a normal preliminary to an accused being put up for trial for a cognizable offence (except when the Magistrate takes cognizance otherwise than on a police report in which case he has the power under Section 202 of the Code to order investigation if he thinks fit). Therefore, it is clear that when the Legislature made the offences in the Act cognizable, prior investigation by the appropriate police officer was contemplated as the normal preliminary to the trial in respect of such offences under the Act. In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what "investigation" under the Code comprises.

Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer

deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender.

Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in section 162.

Under section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be -necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned.

It is important to notice that where the investigation is conducted not by the officer in

charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under section 173 of the Code in the prescribed form furnishing various details.

Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173.

The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one

of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under section 551."

(self emphasis supplied)

24. The Hon'ble Supreme Court, in **Adri Dharan Das versus State of W.B.**, reported in **(2005) 4 Supreme Court Cases 303**, has elaborately discussed the purpose of investigation by way of arrest of a person and has held that the Court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. Relevant para-19, of the judgment, is reproduced, as under:

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail

his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance to maintain law and order in the locality. For these or other reasons, arrest may become inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under [Section 438](#) of the Code. The role of the investigator is well-defined and the jurisdictional scope of interference by the Court in the process of investigation is limited. The Court ordinarily will not interfere with the investigation of a crime or with the arrest of accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under [Section 438](#) of the Code will amount to interference in the investigation, which cannot, at any rate, be done under [Section 438](#) of the Code.”

25. In this case, although, the police, on 15th June, 2025, moved the application for police custody, however, the Court of learned Chief Judicial Magistrate, Sirmaur at Nahan, refused the same, as, the investigation was at the initial stage, whereas, the applications for police remand, moved on 1st July, 2025 and 4th July, 2025, contain specific information, which is required to be obtained from accused-Manav Sharma (respondent), on the basis of the evidence, so collected, including the disclosure statement, made by his co-accused Raman Sharma, as well as, on the

basis of the statement of Kulwinder Singh @ Shenty, under Section 180 of the BNSS.

26. The reasons, which have been mentioned, in the orders impugned herein, to the considered opinion of this Court, amounts to interfering with the investigation of the case, by the police.

27. The learned Senior Counsel appearing for respondent-Manav Sharma has argued that the respondent cannot be compelled to be a witness against himself, as, it violates the protection, provided by Article 20 (3) of the Constitution of India.

28. The said argument is devoid of merit. Except the confession, other modes of investigation are there, which have been highlighted by the Hon'ble Supreme Court in **H.N. Rishbud's case** (supra). By refusing the police remand, the police has been divested from its prerogative to investigate the matter.

29. The effect of refusal to grant police remand has been summarized by the High Court of Gujarat in **Kandhal Sarman Jadeja versus State of Gujarat**, reported in **2012**

Cr.L.J. 4165. Relevant para-17 of the judgment, reads as under:

“17. In the light of the aforesaid discussions, our final conclusion may be summarized thus:-

I. An order refusing to grant remand has direct bearing on the proceedings of the trial itself and in a given case will definitely have effect on the ultimate decision of the case.

II. An order refusing to grant remand may effect progress of the trial or its decision in any manner if investigating agency is deprived of having custodial interrogation of the accused so as to effectively investigate the offence and gather necessary evidence and material to put the accused to trial.

III. An order refusing to grant police remand would be a final order and revision under Sections 397 read with Section 401 of the Code would be maintainable.”

30. The custodial interrogation is also held to be effective mode of investigation, by the Hon’ble Supreme Court, in **Special Leave Petition (Crl.) No. 9949 of 2023, titled as Ashok Kumar versus State of Union Territory Chandigarh.** Relevant para-12, of the said judgment, is reproduced, as under:

“17. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial

interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation.”

31. If the facts and circumstances of the present case are judged in the light of the legal proposition, as reproduced hereinabove, in the considered opinion of this Court, the petitioner is able to make out a case for interference in the orders, passed by the learned trial Court, rejecting the applications for police remand, on 1st July, 2025 and 4th July, 2025.

32. So far as the adverse remarks, recorded by the learned trial Court, in impugned order, dated 4th July, 2025, are concerned, the learned trial Court has simply branded the investigation as *myopic and with the sole intention to secure police custody of accused Manav Sharma by any means possible*. Not only this, the application for police remand has also been held to be *malafide and filed with ulterior motives*. Thereafter, recommendation has

been made to Director General of Police, Himachal Pradesh and Superintendent of Police, Sirmaur, to take action against him, by branding his conduct as *reprehensible and against the basic tenets of criminal jurisprudence*. However, in the order, no reason has been assigned for drawing the above conclusion, as, the IO is seeking only the police remand of respondent-Manav Sharma.

33. In such situation, question, which arises for determination, before this Court, is as to whether the said remarks are sustainable in the eyes of law or not?

34. In this regard, reliance can be placed on the decision of the Hon'ble Supreme Court in **State of Punjab and anr. versus M/s. Shikha Trading Co.**, reported in **2023 (11) SCALE 661**, wherein, the Hon'ble Supreme Court, has re-iterated the earlier decisions and held, as under:

17. By way of this appeal, we have been asked to exercise powers, inherent in this Court, to expunge remarks reproduced supra against the said officer, from record. It would be appropriate to consider the various principles in respect of passing adverse remarks against an officer- be it judicial, civil (as in the present case) or police or army personnel, and expunction thereof.

18. The three principles laid down in *Naim (supra)* deal with what is required of the court, prior to, finding it fit to pass adverse remarks.

18.1 It has been reasserted time and again that remarks adverse in nature, should not be passed in ordinary circumstances, or unless absolutely necessary which is further qualified by, being necessary for proper adjudication of the case at hand. (*Niranjan Patnaik v. Sashibhusan Kar* (1986) 2 SCC 569, two-Judge Bench; *Abani Kanta Ray v. State of Orissa* (1995) Supp (4) SCC 169, two-Judge Bench; *A.M. Mathur v. Pramod Kumar Gupta* (1990) 2 SCC 533; two-Judge Bench)

18.2 Remarks by a court should at all times be governed by the principles of justice, fair play and restraint. (*Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi*, (1987) 1 SCC 227; three-Judge Bench) Words employed should reflect sobriety, moderation and reserve. {*K.G Shanti (supra)*}

18.3 It should not be lost sight of and per contra, always be remembered that such remarks, “due to the great power vested in our robes, have the ability to jeopardize and compromise independence of judges”; and may “deter officers and various personnel in carrying out their duty”. It further flows therefrom that “adverse remarks, of serious nature, upon the character and/or professional competence of a person should not be passed lightly”. {*E.Koyakunju (supra)*}

19. Keeping the above principles in mind, the power to expunge remarks may be exercised by the High Court and this Court: –

19.1 With great caution and circumspection, since it is an undefined power; (*Dr. Raghubir Saran v. State of Bihar*, AIR 1964 SC 1; two-Judge Bench)

19.2 Only to remedy a flagrant abuse of power which has been made by passing comments that are likely to cause harm or prejudice; {Dr. Raghubir Saran (supra)}

19.3 In respect of High Courts exercising such power, it has been observed:

19.3.1 The High Court, as the Supreme Court of revision, must be deemed to have power to see that courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it. {Panchanan Banerji v. Upendra Nath Bhattacharji [AIR 1927 All 193, as referred to in Sashibhusan Kar (supra)]}

19.3.2 Though in the context of Judicial officers, this Court has observed that “The role of High Court is also of a friend, philosopher and guide of judiciary subordinate to it. The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition if committed once innocently or unwittingly. “Pardon the error but not its repetition”. This principle would apply equally for all services. The power to control is not to be exercised solely by wielding a teacher’s cane.”

35. It would also be profitable to reproduce paras 10 to 15 of the judgment, rendered by the Hon’ble Supreme Court in **Neeraj Garg versus Sarita Rani and others**, reported in **(2021) 9 Supreme Court Cases 92**, as under:

“10. In Alok Kumar Roy vs. Dr. S.N. Sarma, AIR 1968 SC 453, in the opinion written by C.K. Wanchoo, J. for a five-Judge Bench, this Court had emphasized that even in cases of

justified criticism, the language employed must be of utmost restraint. The use of carping language to disapprove of the conduct of the Counsel would not be an act of sobriety, moderation or restraint.

11. The judgment of this Court in A.M. Mathur vs. Pramod Kumar Gupta, (1990) 2 SCC 533, delivered by K. Jagannatha Shetty, J., elaborates on the need to avoid even the appearance of bitterness. The Court observed that: (SCC pp. 538-39, para 13)

13. ... The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might be better called judicial respect, that is respect by the judiciary.”

12. The importance of avoiding unsavory remarks in judicial orders as per established norms of judicial propriety has also been succinctly noted in Abani Kanta Ray vs. State of Orissa, 1996 SCC (L&S) 175, by J.S. Verma, J. in the following words: (SCC p. 178, para 15)

“15. ... Use of intemperate language or making disparaging remarks against anyone, unless that be the requirement for deciding the case, is inconsistent with judicial behaviors. Written words in judicial orders are for permanent record which make it even more necessary to practice self restraint in exercise of judicial power while making written orders.”

13. The principles laid down as above, have been quoted with approval and applied by this Court in several subsequent judgments,

including for a three-Judge Bench in Samya Sett vs. Shambhu Sarkar, (2005) 6 SCC 767. In this case C.K. Thakker, J. writing for the Court opined that the adverse remarks recorded were neither necessary for deciding the controversy raised before the Court nor an integral part of the judgment, and accordingly directed deletion of those remarks.

14. The proposition of law laid down by S.K. Das, J. on behalf of the four-Judge Bench in Mohd. Naim, AIR 1964 SC 703, on recording of adverse remarks has been approved in a catena of decisions since 1964. It was also cited by the Supreme Court of Sri Lanka in A.N. Perera Vs. D.L.H. Perera, 1982 SCC OnLine SL SC 20, where Abdul Kadir, J. speaking for the Bench approved of the tests laid down by this Court and concluded that the judge's comments against the petitioner in that case were thoroughly unwarranted under each of those tests.

15. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the court."

36. If the impugned order, dated 4th July, 2025, is seen, in the light of the decisions of the Hon'ble Supreme Court, as reproduced hereinabove, this Court is of the view that the remarks against the SHO, Police Station Majra, and branding the investigation with the terminology, as

mentioned in the said order, do not pass the judicial scrutiny by this Court, as, there is nothing on the record to give an occasion, for the learned trial Court, to pass such remarks. Thus, the same are liable to the expunged.

37. Judging the entirety of the facts and circumstances of the present case, in view of the law discussed hereinabove, as well as, the discussion made above, the orders, dated 1st July, 2025 and 4th July, 2025, passed by the learned trial Court, which are impugned herein, do not sustain in the judicial scrutiny by this Court and the same are liable to be set aside.

38. In view of the above, the petition is allowed and the impugned orders, dated 1st July, 2025 and 4th July, 2025, passed by the learned trial Court, are set aside.

39. The Investigating Agency to move fresh application for remand, before the learned trial Court, today itself, i.e. 7th August, 2025. The matter is ordered to be put up before the learned trial Court, at 03.00 p.m., with a direction to decide the application for remand, today itself, in view of the discussions made hereinabove, in the

presence of the accused, i.e. respondent-Manav Sharma, by issuing production warrant.

40. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present petition.

41. Pending miscellaneous applications, if any, are also disposed of accordingly.

42. Registry to forward a soft copy of this order to the learned trial Court, forthwith, for compliance.

(Virender Singh)
Judge

August 07, 2025
(rajni)