

IN THE HIGH COURT OF GUJARAT ... AT AHMEDABAD

[District-Surat]

Special Criminal Application No.

of 2019

[For Direction]

Petitioner: Bilal Gulam Rasul Kagazi

Versus

Respondents: Investigation Officer of C.R.No.I - 136/2019  
and others

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Petitioner: Bilal Gulam Rasul Kagazi

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Respondents: Investigation Officer of C.R.No. I – 136/2019  
and others

LIST OF DATES AND EVENTS

Seeking Direction:	Against the Investigation Officer for fair investigation by taking into account the various representations made by the petitioner-accused in respect of his plea of alibi, as he was not present at the place of offence at the relevant time and date and not at all involved the said crimes in any manner directly or indirectly.
12-8-2019	A FIR has been registered against 8 to 12 persons u/s.143, 144, 148, 149, 307, 323, 324, 325, 427, 120-B, 504, 506(2) of the IPC and the name of the present petitioner has been falsely inserted after 12 hours being an advocate of the other co-accused persons in some other cases, who is also representing them in other cross criminal cases. The purpose behind this insertion is to silent the voice of the petitioner.

<p>16-8-2019 18-8-2019</p>	<p>The petitioner was not involved in the aforesaid incident at all and he was not present at the time and date of the said incident, hence, after waiting for few days, he informed the various police authorities by written representation with CCTV Camera footage that police may investigate the same.</p>
<p>25-8-2019</p>	<p>Despite after two weeks, the police has not investigated anything about the actual involvement of the present petitioner and so, the petitioner has again represented his case before the DSP, Surat with written representation and details about the material, which could unearth the fact that he was not on the spot.</p>
<p>27-8-2019</p>	<p>The learned Additional Sessions Judge, Surat has granted the Anticipatory Bail to the petitioner.</p>
	<p>Almost a month has been passed since the lodging of the said FIR. However, it appears that the police is not interested in fair investigation of the present case and is neither checking/ascertaining the material regarding the presence of the petitioner nor taking/recording the statements of the witnesses, who are having full knowledge about the absence of the present petitioner.</p>
	<p>HENCE, THIS WRIT PETITION</p>

IN THE HIGH COURT OF GUJARAT ... AT AHMEDABAD

[District-Surat]

Special Criminal Application No. \_\_\_\_\_ of 2019

[For Direction]

Petitioner: Bilal Gulam Rasul Kagazi, aged about-38 years, Muslim, Male, Occupation-Legal Practice, Residing at: Behind Government Dispensary, Kosamba, Taluka-Mangrol, District-Surat (M-9429507017) Email: adv.bilal2009@gmail.com

Versus

Respondents:1. Investigation Officer of C.R.No.I – 136/2019  
FIR registered at Kosamba Police Station,  
Local Crime Branch, Surat Rural, Valthan,  
Surat  
2. DySP, Surat Rural Zone, Kamrej, Surat  
3. District Superintendent of Police, Surat Rural,  
Athawalines, Surat  
4. Nadim Ibrahim Shaikh – Informant, aged  
about-24 years, Male, Muslim, Occupation-  
Service, Residing at: Tarsadi Gam, Besides,  
Panchal Complex, Taluka-Mangrol, District-  
Surat

To,

The Hon'ble Chief Justice and Other Hon'ble Judges of the  
High Court of Gujarat ... at Sola, Ahmedabad

PETITION UNDER ARTICLE-226 OF THE CONSTITUTION OF INDIA READ WITH SECTION-482 OF THE CODE OF CRIMINAL PROCEDURE SEEKING DIRECTION AGAINST THE RESPONDENT NO.1 TO 3 BY WAY OF WRIT OF MANDAMUS:

The Petitioner most respectfully submits that:

1. Petitioner is the citizen of India and Indian National. The petitioner, thus, is entitled to fundamental rights enshrined in part-III of the Constitution of India as well as other constitutional and legal rights available to the petitioner as per the laws of the land.
2. The Petitioner is a practicing advocate at the Mangrol Taluka Court and also practicing at the District Court, Surat. He has become a victim of personal vendetta, wherein his name has been wrongly inserted in the FIR being No. I - 136/2019, even though at the time of so-called incident, the Petitioner was very much at his home entire time, when the alleged offences took place. And even after raising the plea of alibi before the respective Police authorities time and again and making representations and submitting various evidences to support the same, the Police has till date, made no attempt to investigate about the same.
3. By way of this Petition, the petitioner is seeking direction against the Investigation Officer for fair, impartial and prompt investigation. Further, to take

into account the various genuine representations made by the petitioner-accused in respect of his plea of alibi, as he was not at all present at the place of offence at the relevant time and date and not at all involved the said crimes in any manner directly or indirectly. The certified copy of the said FIR is annexed at **Annexure-A**.

4. Brief facts leading to this petition are as follows:
  - 4.1 The petitioner is an advocate by profession. Since past two years, there has been a dispute going on in Kosamba village between two groups, wherein the Petitioner has been representing one group in number of criminal cases as an advocate.
  - 4.2 On 12/08/2019, a FIR has been lodged being I-136/2019 under Section 143, 144, 148, 149, 307, 323, 324, 325, 427, 120-B, 504 and 506(2) of the IPC. The said FIR has been filed against eight persons including the Petitioner. The Complainant has alleged that all the accused persons were present at the place of alleged offence and has made an attempt to kill him when he and his nephew were going home at 8:30 in the morning.
  - 4.3 However, even though the incident took place at 8:30 in the morning (although, this is not the exact time), the Complainant filed the said FIR after 12 hours without giving any satisfactory explanation, which evidently states that his entire story of the

complaint is concocted and made up so far as the presence of the petitioner-accused is concerned. The Petitioner, at the time of the alleged offence, was in fact, at his home/house and nowhere near the place where the alleged offence took place. The petitioner's name was inserted and added just to take a grudge against him – as he is representing the co-accused in number of criminal cases against the Complainant. Besides, though, the police was well aware about the same, as at the time of so-called scuffled between these two groups, police were passing through the said road and they immediately dispersed these persons and two were slightly injured, which police took them to private dispensary and at that time police knew very well that the petitioner was not on the spot.

4.4 However, just to silence the voice of the petitioner, the police in collusion with the informant inserted the name of the petitioner for some other reasons best known to them.

4.5 It is also pertinent to note that in the FIR, the informant has wrongly stated that the petitioner met him on 20-6-2019 near Surat Railway Station, which is also completely untrue and got up, as the petitioner never met him and at no point of time gave any kind of threat, as being a lawyer having practice of 12 years, he would not do such childish

act. Hence, the police is also required to check the veracity of this very first version of the informant by collecting CCTV Footage at the place indicated by the informant at Surat, as this was absolutely false.

4.6 Hence, the petitioner raised his plea of alibi and subsequently, immediately within a week, made detailed representations to the IO, Dy.SP and DSP, Surat on 16/18-08-2019, which is annexed at **Annexure-B.**

4.7 The Petitioner has also submitted evidences supporting his plea of alibi, which clearly establish that when the alleged offence took place, he was at his home only.

4.8 The Petitioner has CCTV camera in his house and he also submitted the entire footage from the said CCTV camera, in which the Petitioner can be clearly seen in the house and it is clear that there is no case made out against the Petitioner at all, as these things received by all the police authorities and they have neither countered the same nor it were checked and found false.

4.9 The Petitioner, then, made a further written representation about the same with more details and material to DSP, Surat on 25/08/2019, which is annexed at **Annexure-C.**

4.10 In spite of this several detailed representations and evidences given, the Police have taken no steps to



investigate about the same or has till date, made no any steps in furtherance of his plea of alibi. Hence, the Petitioner was compelled to file an application for Anticipatory Bail, which was granted by the Additional Sessions Judge, Surat on 27/08/2019.

4.11 It is further submitted that the place of so-called offences can be accessed by only two routes, where the alleged crime took place. And in both these routes, there are CCTV cameras. The Petitioner is nowhere to be seen either before or after or at the time when the alleged crime took place from both the footage of those CCTV cameras. These evidences were also given to police with request to verify the same, which clearly establish that no role has been played by the Petitioner and Petitioner's name was merely added falsely as an accused of the said offences with an oblique motive. But, still no steps for fair and proper investigation has been taken by any of the Police authorities including the higher officials, who were very well aware about the same that the petitioner was not present at all on the so-called crime sight/scene.

4.12 Hence, the petitioner has no other alternative left, but to prefer the present petition on the following grounds, as despite making numerous written and oral representations and providing exact evidences, the IO has failed to do his job/carry out legal duty

and the Petitioner has been unreasonably harassed and a Sword of Damocles is always hanging over him for no fault of him.

4.13 The copy of his Identity Card of Bar Council of Gujarat and the copy of the order passed in his Anticipatory Bail Application dated 27-8-2019 are annexed at **Annexure-D** and **E**.

5. GROUND FOR THIS WRIT PETITION:

5.1 The entire motive of adding the name of the Petitioner in the said FIR by the complainant was to take out a personal vengeance.

5.2 The fact in the present case is that: it is actually the petitioner who is the real victim of the case, as he is suffering for doing his job to represent certain co-accused in a capacity of advocate and so, just to shut out from those cases, he has been made scapegoat, so, he could not dare to represent them in future.

5.3 Hence, without having no knowledge about the said incident or no any role in the alleged offences, the petitioner's name has been inserted/added in the said FIR without any substance and without an iota of evidence.

5.4 It is an established principle of law that a preliminary inquiry/investigation has to be undertaken before registration of FIR in certain cases. In this case, the Police, though, already well aware about the fact that the petitioner was not at the place, when such

incident was happened, as the police themselves have dispersed the persons, who were fighting with each other and then, police took two injured persons to private dispensary in their police jeep itself and evidently, the petitioner was not there at all.

5.5 However, without making any sort of inquiry for finding out the truth, they mechanically registered the said FIR in a most cavalier and casual manner, due to which the Petitioner has been wrongly shown as accused of such offences, which he never committed.

5.6 It is submitted that even after the registration of the FIR, the IO has taken no steps for fair investigation. Despite of submitting various CCTV footages/copies, the Police has shown no interest and is acting in a very lethargic manner in investigating and finding out the facts of the matter. This clearly jeopardies the fundamental rights of the petitioner, as the police is unnecessarily playing with the liberty of the accused, who evidently not present at the time of alleged offences.

5.7 It has been enumerated in many landmark decisions that it is the duty of the Police to investigate and find out the real facts of the matter. Without this, the trust and faith of the people in the State will be lost. The Complainant has added the name of the Petitioner, because the Petitioner is representing the

co-accused in other cases as an advocate. This threatens the very basis and foundation of legal system and the independence of the legal profession. Besides, this insertion is at the behest of the police just to silence the voice of the petitioner, who is also working as an activist and human rights lawyer.

5.8 It is further submitted that it has been almost a month since the said FIR has been filed. Still, the Police have neither collected any proper evidence nor it is appreciating any evidence put before them in furtherance of Petitioner's plea of alibi.

5.9 It appears that the police is not interested in fair investigation of the present case and is neither checking/ascertaining the material regarding the presence of the petitioner nor taking/recording the statements of the witnesses, who were present at the alleged place of offence and while passing through the said road in Jeep, police is well aware about the fact that few persons were having full knowledge about the absence of the present petitioner. But their statements have not been recorded and they have been side tracked.

5.10 The petitioner, therefore, prefers this writ petition seeking direction against the concerned police officers, as it is the legal duty of the State to investigate the real facts of the matter, in which offences are committed and to find out the actual

offenders rather to rely on informant's fake version/s and to unearth the truth.

6. Petitioner has not filed any other petition or appeal or any application with regard to the subject matter of this petition either before this Hon'ble Court or before any other court including the Supreme Court of India.
7. Petitioner has no other alternative or efficacious statutory remedy except this petition.
8. Petitioner, therefore, most humbly prays to Your Lordships that:
  - (A) Be pleased to admit the present petition and allow it by issuing writ of mandamus or any other writ in the nature of mandamus and be pleased to pass an order or direction to the Respondent No.1, 2 and 3 to do fair and proper investigation under the CrPC in respect of the representations made by the petitioner dated 16/18/25-8-2019 in interest of justice and to serve the purpose of fair, just and impartial investigation.
  - (B) Be pleased to grant any other or further relief as may be deemed fit in the interest of justice considering the peculiar set of facts of this case.

AND FOR THIS ACTS OF KINDNESS AND JUSTICE, THE PETITIONER HEREIN IS DUTY BOUND AND SHALL FOREVER PRAY.

Date: (Kashyap R. Joshi)

Place: [Advocate of the Petitioner]

AFFIDAVIT

I, Bilal Gulam Rasul Kagazi, aged about-38 years, Muslim, Male, Occupation-Legal Practice, Residing at: Behind Government Dispensary, Kosamba, Taluka-Mangrol, District-Surat, do hereby solemnly affirm and state on oath that:

I am the petitioner of the present case and I am acquainted with the facts of the case and also conversant with the record of the case, available to me.

I say and submit that whatever is stated above in para-1 to 5 is true and correct to the best of my knowledge, information and belief and I believe it to be true. Para-6 and 7 are the formal paragraphs. Para-8 contains my prayer clause. Nothing is concealed and no part of it is false.

Verified and signed on ... -9-2019 at ... ..

Identified by me

- Advocate

(Deponent)