

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE JUSTICE SRI RAKESH THAPLIYAL

26th May 2026

Criminal Writ Petition No. 942 of 2026

Smt. X (Victim)Petitioner

Versus

State of Uttarakhand and othersRespondents.

Mr. Ankur Sharma, learned counsel for the petitioner.

Mr. Himanshu Sain learned AGA for the State.

Mr. Piyush Garg, learned Counsel for the CBI.

Mr. Lalit Sharma, Mr. Aditya Singh and Mr. Aryan Dev Uniyal, learned Counsel for the respondent nos. 8 to 10.

Hon'ble Rakesh Thapliyal, J.

A first information report was lodged on 02.04.2026 bearing FIR No. 0129 of 2026 Police Station Rishikesh District Dehradun wherein Mr. Manjeet Jauhar, Mavav Jauhar and Khusagra Sharma have been implicated for the offences punishable under Section 342, 376 and 506 of IPC. Khushagra Sharma who is the respondent no. 10 herein is already in judicial custody. The respondent no. 8 one of the co-accused was granted anticipatory bail by the Ist Additional Sessions Judge Rishikesh.

2. So far as other accused Manav Jauhar is concerned, there are multiple allegations against him who also took objectionable and obscene pictures of the victim and he also shared those pictures with another co-accused Kushagra Sharma @ Romy who is in judicial custody and there is an allegation of giving threat to the victim by Manav Jauhar about making such photographs viral and even on two specific dates

i.e. 18.09.2024 and 27.09.2024 at Farm House of accused Manav Jauhar at Ranipokhri in Hotel Devine, Laxman Jhula committed rape and it has also been alleged that he has raped victim on other occasions. The first Additional Sessions Judge reject his anticipatory bail application by observing that the allegations against Manav Jauhar have prima facie force and there are serious allegations against him and his role has been prima facie found in this case and will affect not only the victim but the society. Almost after 13 days of rejection of anticipatory bail application of Manav Jauhar, both Manav Jauhar and the other co-accused Manjeet Jauhar have been exonerated and the charge sheet has been filed only against Khushagra Sharma @ Romy who is still languishing in jail. It has been apprised to this Court that Khushagra Sharma @ Romy moved bail application which is fixed on 29.05.2026. After having gone through with the order of Additional Sessions Judge what this Court has observed that the Ist Additional Session Judge prima facie found the involvement of Manav Jauhar, despite this within 13 days he has been exonerated.

3. During the pendency of anticipatory bail application No. 32 of 2026 moved by Manjeet Jauhar a report was asked from the I.O. Inspector Mr. Rakesh Sah and I have gone through with the report. The Ist Additional Session Judge recorded that the report is casual and it does not reflect fair, transparent and judicious investigation hence report submitted by I.O. is not accepted. The order of the Ist Additional Sessions Judge dated 21.04.2026 also reveals that the victim moved an application that the SIT has not conducted any effective investigation and when on 18.04.2026 the victim was coming to the court for hearing of anticipatory bail application she was attacked and the victim has submitted an application regarding

the said incident to police station Rishikesh and also given a photo of the car which hit/attacked the victim and the victim has submitted a complaint on the CM Portal also seeking investigation by CBI or CBCID. Though subsequently it has been apprised to the Ist Additional Session Judge that it was only an accident which is reflected from the order granting anticipatory bail.

4. Since in this petition the victim is praying for transfer of investigation to the CBI, on this the counsel for the CBI was directed to get the instruction whether they are ready to take over the investigation and today on instructions Mr. Piyush Garg submits that the CBI has limited manpower and resources and already overburden. A written instruction of the CBI was also placed on record on the previous date in a sealed envelope from which it reveals that the CBI also gone through with the documents of writ petition and give some opinion about the manner in which the investigation has been conducted. The view point of the CBI is not necessary to be mentioned here.

5. After having gone through with the instruction and the observation as recorded by the Ist Additional Sessions Judge in its order dated 21.04.2026 and the fact that within 13 days from the date of granting anticipatory bail, the two accused persons have been exonerated which itself shows that there is some lacuna in the investigation.

6. Learned counsel for the petitioner also apprised to this Court that on an earlier stage one Himani Chaudhary was given the task for the investigation but she was pressurizing the victim to collect to evidence herself and also shared the victim's

statement with the accused persons. Thereafter, on the complaint of the victim, the earlier I.O. was changed and the investigation was given to the SIT. About the conduct of earlier I.O. Himani Chaudhary, the Ist Additional Sessions Judge also took serious note in its order dated 13.04.2026 which is also part of record.

7. By relief 2 the victim is also praying for adequate police protection and as well as to her family members to safeguard their life and liberty. Though there is no specific pleading in the petition with regard to relief 2 but learned counsel for the petitioner submits that the manner in which the final report was filed within 13 days after the grant of anticipatory bail, there may be a possibility that she may be compelled to change her statement. At this juncture Mr. Lalit Sharma, Mr. Aditya Singh and Mr. Aryan Dev Uniyal submits that they want to address on certain issues but Mr. Piyush Garg, learned counsel for the CBI submits that at this juncture when the victim is praying for transfer of the investigation to another agency on the ground that the investigation is not being conducted in a fair manner then there is no question for giving an opportunity to be heard. In a reference to this Mr. Piyush Garg placed reliance to the two judgments of the Apex Court. One in the case of E. Sivakumar vs. Union of India and others (2018) 7 SCC 365 and particularly he placed reliance to para 10 and 11 which are as under:-

“As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In paragraph 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki Vs. State of Gujarat and Ors.2, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in the case of Narender G. Goel Vs. State of Maharashtra and Anr. 3, in particular, paragraph 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By

entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no (2014) 4 SCC 626 (2009) 6 SCC 65 avail. That per se cannot be the basis to label the impugned judgment as a nullity.

Our attention was invited to the observations made in paragraph 73 in the State of Punjab (supra), which in turn adverts to the exposition in D. Venkatasubramaniam & Ors. Vs. M.K. Mohan Krishnamachari & Anr.,⁴ wherein it has been held that an order passed behind the back of a party is a nullity and liable to be set aside only on this score. That may be so, if the order to be passed behind the back of the party was to entail in some civil consequence to that party. But a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of course, cannot be heard to say that the direction issued to transfer the investigation to CBI is a nullity. This ground, in our opinion, is an argument of desperation and deserves to be rejected.”

8. The another judgment which he has placed reliance is in the case of Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj vs. State of A.P and others (1999) 5 SCC 740 and he placed reliance to para 10 which is observed as hereunder:-

“Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.) (AIR 1979 SC 1791). The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.”

9. Mr. Himanshu Sain, the learned AGA apprised to this Court that now on completion of the investigation the charge sheet has been filed therefore, at this juncture when the investigation has been completed, the investigation cannot be transferred to any other agency.

10. On this, in order to assist this Court, Mr. Piyush Garg, the learned counsel for the CBI also placed reliance to another judgment of the Apex Court in the case of Anant

Thanur Karmuse vs. State of Maharashtra (2023) 5 SCC 802 wherein in para 41 and 42 the Apex Court after applying the law laid down in the case of Dhram Pal vs. State of Haryana and others (2016) 4 SCC 160 and Bharati Tamang vs. Union of India and others (2013) 15 SCC 578 held that to do the complete justice and in furtherance of fair investigation and their trial the constitutional court may order further investigation /reinvestigation/de novo investigation even after the charge sheet is filed and the charges are framed, and in para- 48 of this judgment the Apex Court held that the victim has a fundamental right of fair investigation and fair trial, therefore, mere filing of the charge sheet and framing of the charges cannot be an impediment in ordering further investigation/reinvestigation/de novo investigation, the relevant paragraph of the said judgment are as follows:-

41. Now, so far as the reliance placed upon the decision of this Court in Rama Chaudhary relied upon on behalf of the respondent-accused is concerned it is required to be noted that in the said decision, this Court was considering the scope of Sections 173(8) and 173(8)(2) Cr.PC and the right of the police to “ further investigation”. It is observed that the police has not right for “fresh investigation” or “reinvestigation”. However this Court had no occasion to consider the power of the constitutional courts, which are dealt with and considered in Bharat Tamang and Dharam Pal.

42. Applying the law laid down by this Court in Dharam Pal and Bharati Tamang and fair trial, the constitutional courts may order further investigation/reinvestigation/de novo investigation even after the charge-sheet is filed and the charges are framed. If the submission on behalf of the accused and even as observed by the High Court that once the charge-sheet is filed and the charges are framed, there may not be any order for further investigation/reinvestigation/de novo investigation is accepted, in that case, the accused may see to it that the charges are framed to avoid any fair investigation/fair trial. It would lead to travesty of justice.

48. Be that as it may, even according to the State investigating agency, the further investigation is required. As observed and held by this Court in the aforesaid decisions, the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the charge-sheet and framing of the charges cannot be an impediment in ordering further investigation/reinvestigation/denovo investigation, if the facts so warrant.”

11. Put up on 27.05.2026 for further argument. The S.S.P shall also join proceeding through V.C. and to assist the Court. Mr. Sain the learned AGA also get complete case diary let him go through with that.

RAKESH THAPLIYAL, J.

Nahid