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WP-17328-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 14th OF JULY, 2026WRIT PETITION No. 17328 of 2026

*AAVAS FINANCIERS LTD THROUGH ITS AUTHORIZE OFFICER
MR. MUKESH SUTHAR*

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Gulshan Rathore - Advocate for the petitioner.

Shri Shiraz Qureshi - Govt. Advocate for the respondent/State.

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ORDER

This petition under Article 226 of the Constitution of India has been filed by the petitioner seeking following reliefs:-

- "i. Issue a writ of mandamus directing Respondent No. 2 & 3 to register FIR forthwith on the basis of the petitioner's complaint dated 07.05.2026.*
- ii. Direct Respondents No. 2 and 3 to conduct a fair, impartial and time-bound investigation into the criminal acts committed by the borrower.*
- iii. Issue a further writ/direction commanding the police authorities to forthwith restore peaceful and vacant physical possession of the secured asset to the petitioner bank, in terms of the order dated 22.02.2024 passed by the CJM under Section 14 of the SARFAESI Act.*
- iv. Direct the respondents to provide continuous police protection to the secured asset till completion of SARFAESI proceedings.*
- v. Pass any other order(s) as may be deemed fit and proper in the interest of justice."*

So far as the relief pertaining to restoration of possession of the secured asset is concerned, the issue is no longer res integra. In identical circumstances, the Division Bench of this Court in W.P. No. 1681/2025 has



held that there exists no legal impediment in re-executing an order passed under Section 14 of the SARFAESI Act or in extending fresh assistance to the secured creditor where the borrower, after having been dispossessed, illegally re-enters the secured asset and resumes possession thereof. The Division Bench further observed that such illegal re-entry by the borrower cannot be permitted to defeat the statutory rights of the secured creditor or frustrate the object and purpose of the SARFAESI Act.

A similar view has been taken by the Bombay High Court in *Kotak Mahindra Bank v. State of Maharashtra & Ors.* (W.P. No. 6805/2023 decided on 30.06.2023) and in *HDB Financial Services Limited v. State of Maharashtra & Ors.* (W.P. No. 1080/2024), wherein directions were issued to the authorities to restore possession to the secured creditor by re-executing the order passed under Section 14 of the Act. The Full Bench of this Court in W.P. No. 11500/2020 has also held that the action of the District Magistrate or Chief Metropolitan Magistrate under Section 14 of the Act is ministerial in nature and is undertaken for and on behalf of the secured creditor for facilitating recovery of possession of the secured asset.

In view of the aforesaid legal position and having regard to the facts and circumstances of the present case, this Court is of the considered opinion that the petitioner/Financial Institution is entitled to restoration of possession of the secured asset in pursuance of the order dated 22.02.2024 passed under Section 14 of the SARFAESI Act.

Insofar as the reliefs relating to registration of FIR, fair investigation and initiation of criminal action are concerned, it is well settled by the



decisions of the Hon'ble Supreme Court in *Sakiri Vasu v. State of U.P.* [(2008) 2 SCC 409] and *Aleque Padamsee v. Union of India* [(2007) 6 SCC 171] that in cases of non-registration of FIR or alleged police inaction, the appropriate remedy is to approach the jurisdictional Magistrate by filing an application under Section 156(3) of the Code of Criminal Procedure, 1973, corresponding to Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, rather than invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. In the case of *Sakiri Vasu v. State of U.P.* (supra), the Hon'ble Supreme Court has held as under:-

"17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

19.XXX

20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

21.XXX

22.XXX

23.XXX

24.XXX

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the



opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) of Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C. 28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

In view of the aforesaid settled legal position, this Court is not inclined to exercise its writ jurisdiction under Article 226 of the Constitution of India in respect of the reliefs relating to registration of FIR and investigation.

Accordingly, the petition stands **disposed of** with a direction to respondent No. 2 to provide all necessary assistance and aid to the petitioner/Financial Institution for dispossessing the borrower and/or any person claiming through him who is in unauthorised occupation of the



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secured asset and to restore peaceful and vacant physical possession thereof to the petitioner/Financial Institution in accordance with law and with due expedition in terms of the order dated 22.02.2024 passed under Section 14 of the SARFAESI Act. Insofar as the remaining reliefs are concerned, the petitioner shall be at liberty to avail such remedies as may be available under law, including filing an application under Section 156(3) of The Code of Criminal Procedure (CrPC), 1973/175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 before the jurisdictional Magistrate.

(MILIND RAMESH PHADKE)
JUDGE

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