

17.07.19

Sl. No.15
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C. R. M. 4792 of 2019

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 11.06.2019 in connection with Chanchal Police Station Case No. 579 of 2018 dated 11.09.2018 under Section 4 of the POCSO Act. (Special Case No. 101 of 2019)

And

In Re: ***Abdul Khaleque***

... .. Petitioner

Mrs. Sujata Das .. Advocate

... .. for the petitioner

Mr. Saswata Gopal Mukherjee .. Ld. Public Prosecutor

Mr. Nguive Ahmed .. Ld. Addl. Public Prosecutor

Mr. Subrato Roy .. Advocate

... .. for the State

Pursuant to our earlier direction, Sri Sukumar Mishra, presently posted as Circle Inspector, Sadar Balurghat, Uttar Dinajpur and the then Inspector-in-charge, Chanchal Police Station is personally present before this court. His presence is noted and dispensed with.

We have perused the hapless affidavit filed by the aforesaid police officer. It appears from the affidavit that the order of the Magistrate under Section 156(3) of the Code of Criminal Procedure was dispatched to Chanchal Police Station on 13th January, 2018. However, no steps were taken in the matter till 11th September, 2018. Explanation offered in the affidavit by the then Inspector-in-charge, Chanchal Police Station for such inaction is hopelessly vague and non-specific.

The aforesaid state of affairs disclose culpable negligence on the part of the law enforcement agency in compliance with the lawful order passed by the Magistrate under

Section 156(3) of the Code of Criminal Procedure for registration of FIR for investigation of crimes including sex offences as in the present case. It is relevant to mention that lawful orders passed by the judicial authority are required to be scrupulously enforced by the police in terms of the statutory duty engrafted under Section 23 of the Police Act. That apart, failure to register FIRs for sex crimes attracts penal consequences under Section 166A of the Indian Penal Code.

In ***Lalita Kumari vs. Government of Uttar Pradesh & Ors.*** reported in (2014) 2 SCC 1 a Constitution Bench of the Apex Court held that prompt registration of FIR is imperative for the following reasons:-

97.1. (a) *It is the first step to “access to justice” for a victim.*

97.2. (b) *It upholds the “rule of law” inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.*

97.3. (c) *It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.*

97.4. (d) *It leads to less manipulation in criminal cases and lessens incidents of “antedated” FIR or deliberately delayed FIR.*

Only in rare cases as adumbrated in paragraph 120.6 of the report the police authorities may embark on a preliminary enquiry. However, where the judicial authority issues direction for registration of FIR under Section 156(3) of the Code of Criminal Procedure, requirement to hold preliminary enquiry is obviated and it is the mandate of law that such FIR must be promptly registered. Failure to do so constitutes a constitutional tort arising out of breach of the fundamental right of access to justice for victims of crime and action ought to be taken against erring police officers as provided in para 120.6 of the report. That apart, penal consequences as indicated above are also attracted in certain cases involving sex crimes.

Accordingly, Director General of Police, State of West Bengal shall ensure initiation of disciplinary proceeding against Sri Sukumar Mishra, the then Inspector-in-charge, Chanchal Police Station and presently Circle Inspector, Sadar Balurghat, Dakshin

Dinajpur and/or any other police officer who may be responsible for the aforesaid breach and submit report with regard to the fate of such proceeding on the next date of hearing.

In order to ensure that such breaches of statutory duty do not occur in future and the constitutional obligation to 'uphold rule of law' by promptly registering FIRs pursuant to directions given by learned Magistrates under Section 156(3) of the Code of Criminal Procedure are effectively enforced, we direct as follows:-

- 1) *order under Section 156(3) of the Code of Criminal Procedure passed by the learned Magistrate directing registration of FIR shall be positively dispatched from the court concerned to the appropriate police station on the day on which such order is passed and FIR shall be drawn up at the police station and not later than 24 hours from the date of receipt of such order;*
- 2) *Failure to do so shall attract disciplinary proceedings and also penal consequences under Section 166B of the Indian Penal Code particularly in sex offences;*
- 3) *Principal Secretary (Home), Government of West Bengal and Director General of Police, West Bengal shall take immediate steps to incorporate the aforesaid directions in the police regulations so that the discharge of official duties of police officers in the State of West Bengal are accordingly, regulated and the fundamental right to access to justice of victims of crime is not rendered illusory by gross dereliction of official duty by law enforcement agencies as in the present case.*

Report with regard to compliance of the aforesaid directions shall be filed by the Principal Secretary (Home), Government of West Bengal and Director General of Police, West Bengal on the next date of hearing.

Department is directed to communicate a copy of this order to the Principal Secretary (Home), Government of West Bengal and Director General of Police, West Bengal for necessary compliance.

It is submitted on behalf of the petitioner that there are series of criminal cases registered by and between the parties and that he has been falsely implicated in the

instant case. It is further submitted that the de-facto complainant was arrested in an earlier case registered at the behest of the petitioner.

Learned advocate for the State produces the case diary and opposes the prayer for anticipatory bail.

Having considered the materials on record and bearing in mind the nature of allegations in the light of the aforesaid submission made on behalf of the petitioner relating to pre-existing enmity between the parties, we are of the opinion though custodial interrogation of the accused/petitioner may not be necessary in the facts of the present case and he may be granted anticipatory bail, his movement requires to be restricted in order to instil confidence in the minds of the de-facto complainant and the victim.

Accordingly, we direct that in the event of arrest, the accused/petitioner, namely **Abdul Khaleque**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on further condition that he shall not enter the jurisdiction of Chanchal Police Station except for attending court proceedings and/or investigation until further orders and shall provide the address where he shall presently reside while on bail to the Investigating Officer as well as the court below and shall meet the Officer-in-charge of the concerned police station where he shall reside once in a week until further orders and shall appear before the court below and pray for regular bail within four weeks from date.

Let this matter appear under the heading 'To Be Mentioned' on **5th November, 2019** for submission of reports.

Let photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be handed over to the parties on usual undertaking.

(Manojit Mandal, J.)

(Joymalya Bagchi, J.)

