

HIGH COURT OF JUDICATURE AT ALLAHABAD

Chief Justice's Court

Case: CRIMINAL MISC. WRIT PETITION No. - 1648 of 2017

Petitioner :- Ram Kishan Singh

Respondent :- State Of U.P. Thru' Prin. Secy. And 4 Others

Counsel for Petitioner :- Udai Chandani

Counsel for Respondent :- G.A.

Hon'ble Dilip B. Bhosale, Chief Justice

Hon'ble Yashwant Varma, J.

Heard Sri Udai Chandani, learned Counsel for the petitioner and the learned Additional Advocate General for the State-respondents.

The petitioner has approached this Court by means of the instant writ petition seeking a direction commanding the Senior Superintendent of Police, Allahabad, the fourth respondent herein, to take requisite action against the accused persons with reference to a First Information Report (FIR) registered on 14 December 2016 as Case Crime No. 1117 of 2016, under Sections 147, 148, 149, 395, 323, 504, 506 I.P.C. read with Section 7 of the Criminal Law Amendment Act, 1932. Further writs have been sought for summoning of the entire records relating to the investigation as also for providing security to the petitioner and his family members. The petitioner is stated to be a Security Officer in the Sam Higginbottom Institute of Agriculture, Technology and Sciences Allahabad [hereinafter referred to as "the Institute"]. The petitioner refers to two earlier FIR's lodged on 26 August 2015 and 22 November 2016 highlighting that certain criminals elements had interfered in the peaceful functioning and academic atmosphere of the Institute. On 14 December 2016 an incident is stated to have taken place in the Institute premises when the named accused [which include an ex Member of Parliament] along with 50-60 other miscreants entered the offices of the Institute at around 4 p.m. and ransacked the offices and brutally assaulted the staff including the present petitioner. These acts were captured on the CCTV cameras installed in the Institute in which, according to the petitioner, all the named accused and other miscreants can be duly identified. In respect of this incident Case Crime No. 1117 of 2016 came to be registered alleging commission of offences under Sections 147, 148, 149, 395, 323, 504, 506 I.P.C. read with Section 7 of the Criminal Law Amendment Act, 1932. The petition further alleges all the relevant evidence including the CCTV footage was handed over the police in aid of investigation. The allegation in the writ petition was that the named accused were exerting undue influence and pressure upon the Investigating Officer and other police officials, as a result of which it was apprehended that material evidence would be tampered with and the investigation itself not conducted in a fair and impartial manner. The petitioner alleged that although the incident had occurred on 14 December 2016, the police authorities had failed to effect any arrests and that the accused persons were openly and freely moving in and around the city with impunity holding out threats to the petitioner and his family members. The learned counsel for the petitioner had further drawn our attention to the communications issued by the Registrar of the Institute to the fourth respondent as well as to the Commissioner of the Allahabad Division seeking the grant of security to the petitioner and the other first informant. At Annexure 7 is a copy of facsimile message again sent by the Registrar of the Institute addressed to the Additional Secretary in the Ministry of Home of the Union Government highlighting the grave threats which were being meted out to the petitioner and other employees of the Institute.

Taking serious note of the allegations this Court on 8 February 2017 granted time to the learned Additional Government Advocate to obtain requisite instructions and apprise this Court of the stage of the investigation. On 10 February 2017, the learned learned Additional Government Advocate apprised the Court that serious efforts were being made to arrest all the accused in the case. We have also noted in the order passed on the said date the statement of the learned Additional Government Advocate that if any of the accused persons approach either the Magistrate or any other Court seeking relief including bail the Investigation Officer as well as the Senior Superintendent of Police would inform the concerned Court about the pendency of this matter and request for adjournment. We further granted liberty to the petitioner to intervene in any such application which may be made by the accused persons.

On 13 February 2017, when this matter was taken up again, we directed the learned Additional Advocate General to comply with our earlier directions and place a list of all cases pending against each of the accused. We accordingly adjourned the matter to 15 February 2017 and called upon the learned Additional Advocate General to apprise us as to whom they proposed to transfer the investigation of the case.

On 15 February 2017, the fourth respondent filed an Affidavit bringing on record an order dated 14 February 2017 whereby the investigation of the case was transferred to the Superintendent of Police (Crime). Along with the said Affidavit, the fourth respondent also brought on record a list of as many as forty four criminal cases which were stated to be pending in various Courts in District Allahabad against the main accused. All these cases, we are constrained to note, allege the commission of heinous crimes and of the disclosed forty four cases as many as twelve relate to offences referable to Sections 302, 307 and 364 I.P.C. Apart from the cases pending against the main accused in District Allahabad, we were also apprised of the pendency of six cases pending in different Courts in the District of Lucknow, of which two were stated to be placed for disposal before the C.B.I. Court. Of these six cases, three cases alleged commission of offences under Sections 302, 365 and 368 I.P.C. This history of crimes also refers to two cases filed under the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986. In all these cases the primary accused was stated to have been granted bail. Upon these facts coming to light, we called upon the learned Additional Advocate General appearing for the State-respondents to apprise us whether the State proposes to file any application for cancellation of bail in the earlier crimes on the ground that the accused had after being enlarged on bail committed similar offences and abused the liberty accorded to them. We accordingly adjourned the matter to 17 February 2017. Since the matter could not be taken up on 17 February 2017, we took up the petition for review of further progress in the matter today.

The fourth respondent has today filed a further Affidavit bringing on record instructions stated to have been issued on 16 February 2017 calling upon the officers attached to the different police stations in the district of Allahabad to take steps for filing applications for cancellation of bail granted to the main accused. This communication of the fourth respondent notes that the criminal conduct of the main accused evidences that the bail granted to him on earlier occasions is being abused and that the main accused as well as his accomplices had subsequently indulged in heinous crimes thus creating an atmosphere of terror and insecurity in the minds of the general public. Based on these directives issued by the fourth respondent, the concerned Circle Officers are also stated to have issued instructions to the Public Prosecutors to take steps for seeking cancellation of bail granted to the primary accused and his accomplices.

It becomes pertinent to note here that when these proceedings were taken up for consideration on 13 February 2017, Sri Udai Chandani, learned counsel appearing for the petitioner, had submitted that immense pressure was being exerted upon the petitioner to withdraw the present writ petition. The petitioner has thereafter, as the record would reveal,

filed an application for withdrawal of the writ petition itself which came up before us on 16 February 2017 when it was directed to be called along with the record. In the Affidavit filed in support of this application the petitioner has contended that he was only concerned with his security and proper investigation and that since the police authorities are doing their best the petitioner desires to have the instant writ petition dismissed as not pressed. In paragraph 5 of the Affidavit a prayer is made that the writ petition be dismissed as withdrawn. From the narration of facts, as noticed above, prima facie, it appears that the views expressed by the fourth respondent in his communication dated 16 February 2017 to the effect that the primary accused and members of his gang are spreading terror and instilling fear and a sense of insecurity in society cannot be lightly brushed aside. At this stage, bearing in mind the nature of facts revealed and the backdrop in which the application is made, we find sufficient material to deny the prayer of the petitioner for dismissal of the writ petition as withdrawn. The issue as to whether we shall, regardless of the application of the petitioner and in exercise of powers conferred by Article 226 of the Constitution, proceed to take suo moto cognizance of the entire matter is left for further deliberation on the next date. We do so primarily so as to not prejudice the rights of respective parties at this stage as also to ensure a fair hearing to all concerned. However the state of the record as it exists today does constrain us to make the following observations.

While we are conscious of the fundamental duty of a court of law to zealously uphold the personal liberty of an individual, we are also conscious of the fact that individual liberty is not an inviolable right and cannot be viewed in absolute terms. This right of personal liberty is subject to just and reasonable restrictions and must be weighed in balance with the interest of society at large. We deem it apposite to note the following observations of the Supreme Court in Chandrakeshwar Prasad Vs. State of Bihar and Another¹ as also in Neeru Yadav Vs. State of Uttar Pradesh and Another². Although made in the context of grant of/cancellation of bail, the observations made in the aforementioned judgments ring true and deserve being highlighted in the facts of the present case also. In both the judgment the Supreme Court underlined the importance of deliberating upon and balancing the rights of an individual and the interests of society. Their Lordships further reiterated the importance of a Court considering the grant of bail weighing the totality of the circumstances and also taking into consideration the criminal antecedents of an accused. In Chandrakeshwar Prasad their Lordships after reviewing the earlier precedents on the subject, in Paragraph 13 of the report, observed:

"13. On a careful perusal of the records of the case and considering all the aspects of the matter in question and having regard to the proved charges in the cases concerned, and the charges pending adjudication against the respondent-accused and further balancing the considerations of individual liberty and societal interest as well as the prescriptions and the perception of law regarding bail, it appears to us that the High Court has erred in granting bail to the respondent-accused without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue."

Similarly, in Neeru Yadav it was observed that an individual who conducts himself in a manner which brings about disharmony in the collective social order must necessarily face the legal consequences. On this aspect, the Supreme Court ruled:

"16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bedrock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the

fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

In *Neeru Yadav Vs. State of U.P. And Another*³, Criminal Appeal No. 1272 of 2015 (@ SLP (Crl) No. 1596 of 2015 decided on 29 September 2015, the Supreme Court observed:

"13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:-

"Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters[9].

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner."

The above observations were highlighted by a Division Bench of the Hyderabad High Court of which one of us [Dilip B. Bhosale, CJ] was a member] and directions were issued to the State Government in the following terms:

"The learned Special Government Pleader, on instructions from Mr. Y.Narasimha Reddy, S.I. of Police who is present in Court, states that the detenu is enlarged on bail in 11 cases as against 14 crimes and in Crime Nos.16/2011, 117/2012 and 106/2013, the arrest is not

shown. much less any bail is granted to the detenu. This Court is compelled to observe that the learned Magistrates while considering grant of bails are not taking note of dicta of the Apex Court in the decisions referred to above and the applications for grant of bail are ordered on the consideration to the fact that the accused is in custody for a reasonable period. It is further noted that the grant or refusal of bail is in the exclusive jurisdiction of Courts of competent jurisdiction and such grant or refusal of bail is examined by the Courts on case to case basis, bearing in mind the binding precedents referred in this order, but not in a routine manner."

More recently, this aspect was again highlighted in *Asha Ranjan Vs. State of Bihar & Others* [Writ Petition (Criminal) No.132 of 2016 decided on 15 February 2017] when while dealing with the right to transfer an under trial from a jail in one State to another, the imperative necessity of a constitutional court upholding the rule of law and order in society was reiterated in the following terms:

"69. Presently, we shall advert to the facts which we have stated in the beginning. The third respondent has already been declared as a history-sheeter type 'A', that is, who is beyond reform. Till today, he has been booked in 75 cases, out of which he had been convicted in 10 cases and presently facing trial in 45 cases. There is no dispute that he has been acquitted in 20 cases. Out of 45 cases, 21 cases are those where maximum sentence is 7 years or more. He has been booked in 15 cases where he has been in custody and one such case relates to the murder of the third son of the petitioner and other two cases are of attempt to murder. He is an influential person of the locality, for he has been a representative to the Legislative Assembly on two occasions and elected as a Member of Parliament four times. This is not a normal and usual case. It has to be dealt with in the aforesaid factual matrix. A history-sheeter has criminal antecedents and sometimes becomes a terror in society. In *Neeru Yadav v. State of U.P.* and *Anr.50*, this Court, while cancelling bail granted to a history-sheeter, was compelled to observe:-

"16.A democratic body polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

We have referred to the aforesaid authority to highlight how the Court has taken into consideration the paramountcy of peaceful social order while cancelling the order of bail, for the order granting bail was passed without proper consideration of criminal antecedents of the accused whose acts created a concavity in the social stream."

We are constrained to note and recall these observations of the Supreme Court in light of the facts of this case where we find that despite the commission of cognisable offences no steps whatsoever were taken by the State respondents to apprehend the named accused. No efforts appear to have been made post 14 December 2016 [the date when the incident occurred] till cognizance was taken by this Court on the instant writ petition. We cannot turn a blind eye to the fact that the named accused are alleged to have ransacked the precincts of an educational institution. The police authorities appear to have remained mute spectators in the entire episode. Such incidents are not only subversive of the interests of society as a

whole, they tend to tear and stretch the very basic fibre upon which orderly society professes to rest-namely a pledge to the Constitution and the rule of law. We, therefore, prima facie find ourselves unable to find justification in the inaction on behalf of the police authorities. The records even at this stage appear to indicate that although the bail granted was being misused, the named accused were being permitted to run amuck and create an atmosphere of insecurity and terror in society. Why no steps were taken by the police authorities to seek cancellation of bail is not explained. It is only after the instant writ petition was entertained that the State appears to have awoken from slumber and decided to take pro-active steps to ensure the preservation of the rule of law. Since the nature of allegations are serious, we propose to monitor the further steps that the police authorities proceed to take hereinafter. At this stage, we note and take on record the statement made by the learned Additional Advocate General that the police authorities would be taking all steps for making applications seeking cancellation of bail granted to the main accused. We direct the State respondents to place on the record copies of any such application that may be filed. We further record the statement of the learned Additional Advocate General that if bail is sought by any of the named accused or other persons whose names may come to light during the course of investigation, the same shall be duly opposed. We direct the learned Additional Advocate General to apprise this Court even by way of oral mention in case bail is granted to any of the accused by the Magistrate or any other court. With the consent of parties, post this matter on 28 February 2017 in the list of fresh cases for further orders.

Order Date :- 20.2.2017

Arun K. Singh

(Yashwant Varma, J) (Dilip B Bhosale, CJ)