

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 4000 of 2022

Petitioner :- Pramod Kumar And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home, Deptt. Lko. And Others

Counsel for Petitioner :- Ram Charitra Pandey

Counsel for Respondent :- G.A.,Anurag Singh

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

Counter affidavit filed today by Shri Parul Kant, the learned A.G.A is taken on record.

Heard the learned counsel for the petitioners, Shri Anurag Singh, the learned counsel for the respondent No.6 and the learned A.G.A.

This petition has been filed with the following main prayer:-

"i. Issue a writ, order or direction in the nature of certiorari quashing the order dated 06.06.2019 & 26.04.2021 passed by the Opposite Party No. 1 & 4 as contained in Annexure No.1 & 2 to this writ petition.

ii. Issue a writ, order or direction in the nature of mandamus commanding the Opposite Parties No. 2 to 5 not to proceed further on the basis of the impugned order dated 06.06.2019 & 26.04.2021 and not to take any further coercive action against the petitioners on the basis of the further investigation in pursuant to above impugned order dated passed by Opposite Party No.1 & 4."

It has been submitted by the learned counsel for the petitioner that this Court has passed the detailed interim order dated 23.06.2022. This Court has gone through the order, which is quoted hereinbelow:-

"In response to our query as contained in order dated 20.06.2022, Mr. Umesh Verma, learned Additional Government Advocate for the State has placed before the Court some decision, which are as under:

"1. State of Rajasthan Vs. Aruna Devi and others; 1995 (SCC) (Cri) 1,

2. N.P. Jharia Vs. State of M.P.; 2007 CRI. L.J. 3745,

3. Bikash Ranjan Rout Vs. State Through the Secretary (Home) Govt. Of NCT of Delhi, New Delhi; (2019) 2 SCC (Cri) 613,

4. Rama Chaudhary Vs. State of Bihar; [2009 (2) JIC 502 (SC)]

Based on the aforesaid Mr. Umesh Verma, learned A.G.A. has submitted that further investigation in the facts of this case was permissible in law and the Investigating Officer had filed an application before the Court concerned seeking such permission which was ordered to be kept on record, which is the standard practice followed by the trial court.

On the other hand, learned counsel for the petitioners relied upon certain judgments which are as under:

"1. Vinay Tyagi Vs. Irshad Ali @ Deepak and others; 2013 AIR SCW 220,

2. Pooja Pal Vs. Union of India and others; (2016) 3 SCC 135,

3. Amrutbhai Sharbhubhai Patel Vs. Sumanbhai Kantibhai Patel and others; Criminal Appeal No.1171 of 2016."

Based on the aforesaid judgment, learned counsel for the petitioners submitted that in the garb of further investigation de novo investigation is impermissible and this what is being done.

Let counter affidavit be filed by the State within two weeks.

Mr. Anurag Singh, Advocate has put in appearance on behalf of opposite parties no.6 and 7 and filed vakalatnama, same is taken on record. He may also file his counter affidavit, in the meantime within two weeks.

One week time is granted to the petitioners for filing rejoinder affidavit.

List thereafter.

Considering the fact that the final report had earlier been accepted by the Magistrate on 14.09.2015 and now further investigation has been initiated after seven years, the question being as to whether it is permissible, if so how far it is permissible in the facts of the case, we are of the opinion that the petitioners shall not be arrested in connection with the First Information Report No.70 of 2013, under Section 376- D/353/506 I.P.C. Police Station Mahila Thana, District Firozabad, unless there sufficient and cogent evidence is available against them, indicating committing of offence as was alleged in the original F.I.R. The investigation shall go on and the petitioners shall cooperate in the investigation and if they do not do so, then it can be made a ground by the opposite parties for seeking a vacation of this interim order."

Learned A.G.A. has referred to the Section 164 statement recorded of the victim as also the application made to the court concerned for further investigation which has been enclosed along with the counter affidavit filed today. It appears that the allegation of rape was made against several accused. The DNA sample of the foetus, which was aborted, was preserved. The victim had filed the protest petition in court against the final report submitted by the investigating officer. She also filed a writ petition. The officer had written to the court praying DNA

investigation be carried out on the DNA sample to find out as to who was amongst the several accused actually involved in raping the victim, which led to the pregnancy.

This Court finds no good ground to show interference as prayed for in the writ petition.

The writ petition stands **dismissed**.

Interim order, if any, stands vacated.

Order Date :- 20.11.2023

Raj