

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.2054 of 2016

- Akashdeep Singh Gill S/oshri Lakhwant Singh Gill, Aged About 29 Years
Proprietor New Jeewan Bus Service, Pandri Raipur, Tahsil And District Raipur
Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department Mahanadi
Bhavan Mantralaya, New Raipur Chhattisgarh
2. Inspector General Of Police, State Economic Offence Investigation Bureau,
Raipur Chhattisgarh
3. Public Information Officer, State Economic Offence Investigation Bureau, Raipur
Chhattisgarh

---- Respondents

For Petitioner	:	Shri V. K. Sharma, Advocate
For Respondent/State	:	Shri Manish Nigam, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24/03/2017

Heard.

2. This petition has been filed by the petitioner seeking direction of the State authorities to provide him a copy of FIR as also other documents, which is in possession of the State Economic Offences Investigation Bureau.

3. Learned counsel for the petitioner submits that earlier the petitioner had moved an application for supply of necessary documents referred to above, in exercise of his right to seek information under the provisions of Right to Information Act, 2005 (For short "the Act of 2005"). That application was, however, rejected by the authority, therefore, the petitioner has filed this petition.

4. On the other hand, learned State counsel submits that the petitioner has an

alternative remedy of filing an appeal before the competent authority under the provisions of the Act of 2005 and without taking recourse to the provisions under the Act of 2005, he has filed this petition. Learned State counsel further submits that the application of the petitioner has been rejected by the authority on the ground that as per notification dated 07-11-2006 (Annexure R/2) issued by the State Government in exercise of power conferred under the Act of 2005, the State Economic Offences Investigation Bureau has been exempted from application of the Act of 2005, in exercise of power under sub section 2(b) & (c) of Section 27 of the Act of 2005 as provided under 24(4) of the Act of 2005.

5. During the course of arguments, learned counsel for the petitioner submits that in view of the decision of the Supreme Court in the case of ***Youth Bar Association of India vs. Union of India and another***¹, the respondent authorities are under an obligation to upload the copy of FIR either in their own website or if they don't have their own website, they may upload the same in the website of the State Government.

6. In the absence of there being any dispute that the document, copy of FIR, which is sought by the petitioner, is in possession of the State Economic Offences Investigation Bureau, which has been exempted from the purview of the Act of 2005 vide notification dated 07-11-2006 issued by the State Government in exercise of power under sub section 2(b) & (c) of Section 27 of the Act of 2005 as provided under Section 24(4) of the Act of 2005 and the petitioner cannot as of right claim supply of the aforesaid document.

7. In the case of ***Youth Bar Association of India*** (supra), Hon'ble the Supreme Court issued following directions:-

(11.1) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 Cr.P.C.

(11.2) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the

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concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.

(11.3) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.

(11.4) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under the POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(11.5) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

(11.6) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.

(11.7) If an FIR is not uploaded, needless to say, it shall not enure per se a ground to obtain the benefit under Section 438 of the Cr.P.C.

(11.8) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.

(11.9) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.

(11.10) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

(11.11) The directions for uploading of FIR in the website of all the States shall be given effect from 15-11-2016.

8. In view of the directions contained in para 11.4, 11.5, 11.6, 11.8 & 11.9, the decision not to upload the copy of FIR in the website is required to be taken by an authority not below the rank of Deputy Superintendent of Police or any person holding equivalent post. Whether it would be a sensitive case so as not to upload the copy of FIR on the website, the decision has to be taken by the competent authority.

In this case, return of the State is confined on the aspect that the State Economic Offences Investigation Bureau is exempted from the purview of the Act of 2005. However, in view of the decision of the Supreme Court in the case of Youth Bar Association of India (supra), the decision will also be taken in this case, whether disclosure of any particular information is exempted. The petitioner may submit an application before the competent authority along with a copy of this order. The competent authority, in terms of the order passed in the case of Youth Bar Association of India (supra), shall take appropriate decision on the aspect whether a copy of FIR can be uploaded on the website.

9. In view of aforesaid observation, this petition is finally disposed off.

SD/-
(Manindra Mohan Shrivastava)
Judge