

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54765 of 2021

Arising Out of PS. Case No.-113 Year-2021 Thana- BAIKUNTHPUR District- Gopalganj

Sanjay Singh @ Sanjay Kumar Singh, S/o Nandkishor Singh, R/o Village-
Khaira Azam, P.S.- Baikunthpur, District- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Gautam Kumar Yadav, Advocate.
For the Opposite Party/s : Mr.Rana Randhir Singh, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

2 26-11-2021

1. This case has been taken up out of turn on the basis of mentioning slip filed by the applicant/accused.

2. This is an application for grant of regular bail on filing of the charge sheet in Crime No. 113 of 2021 registered with Baikunthpur Police Station for the offence punishable under Sections 30(a) as well as 41 of the Bihar Prohibition and Excise Act, 2016. The applicant has fairly stated that he has one criminal antecedent.

3. Heard the learned counsel appearing for the applicant/accused. He argued that there is no iota of evidence against the applicant except confessional statement of the co-accused made in the FIR to police.

4. The learned Additional Public Prosecutor



opposed the application by contending that 835 litres of illicit liquor came to be seized from the spot after raid on the basis of secret information received by police.

5. I have considered the submissions so advanced and also perused the FIR lodged by one Mr. Prashant Kumar who claims to be the Station House Officer of Baikunthpur. The FIR itself reflect sorry State of affairs in handling human rights by Bihar Police. This Station House Officer has claimed that in raid effected on the basis of secret information, he apprehended main accused Rajan Singh @ Rajan Kumar Singh from the spot of the incident and from his premises, 835 litres of illicit liquor came to be seized. In his FIR, this Prashant Kumar, Station House Officer claimed that 8 to 10 persons who were on the spot managed to flee from the spot. The FIR itself reflects that Mr. Prashant Kumar, Station House Officer had raided the spot with a team of armed Police Officials.

6. Be that as it may, what hurts this Court after perusal of the FIR is recital in the FIR made by Prashant Kumar, Station House Officer, Baikunthpur to the effect that after taking over custody of main accused Rajan Singh @ Rajan Kumar Singh, he had subjected said Rajan Singh @ Rajan Kumar Singh to third degree treatment and made strict interrogation from him



by using force. Recitals in the FIR lodged by this Police Officer shows that main accused Rajan Singh was subjected to torture, not while apprehending him but after taking his custody. This is a matter of serious concern which requires cognizance by none else than the Director General of Police, Bihar State in the light of observations of the Hon'ble Supreme Court in catena of Judgment. This Court feels that lesser said would be better in the instant case. To remind the human rights of the accused in custody of the Police, it is however necessary to quote following extracts from the celebrated Judgment of the Hon'ble Supreme Court in the matter of D.K. Basu -Vs-The State of West Bengal reported in (1997) 1 SCC 416;

“"Torture" has not been defined in Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous with the darker side of human civilisation.

"Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is not way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself."

Adriana P. Bartow

No violation of any one of the human rights has been the subject of so many Conventions and Declarations as 'torture'- all aiming at total banning of it in all forms, but inspite of the commitments made to eliminate torture, the fact remains that torture is more widespread not that ever before, "Custodial



torture" is a naked violation of human dignity and degradation with destroys, to a very large extent, the individual personality. IT is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward-flag of humanity must on each such occasion fly half-mast.

In all custodial crimes that is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma a person experiences is beyond the purview of law.

Fundamental rights occupy a place of pride in the India Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life of personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and the shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguard provided to a person with a view to protect his personal liberty against and unjustified assault by the State, In tune with the constitutional guarantee a number statutory provisions also seek to project personal liberty, dignity and basic human rights of the citizens. Chapter V. of Criminal Procedure Code, 1973 deals with the powers of arrest of a person and the safeguard which are required to be followed by the police to protect the interest of the arrested person.

However, inspite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the creditibility of the Rule of Law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder."

7. The FIR in this case shows that after using full



force, confession of main accused, Rajan Singh @ Rajan Kumar Singh, son of Ramanand Sing came to be extracted by this first informant Prashant Kumar Station House Officer, who has audacity to narrate the same in the FIR itself. That is how it is written in the FIR that main accused Rajan Singh @ Rajan Kumar Singh has stated that the present applicant/accused was also there on the spot for taking delivery of illicit liquor. It is clear that first informant Mr. Prashant Kumar, Station House Officer is oblivious to the position of law in this regard. Sections 24, 25 and 26 of the Evidence Act makes it clear that confession by an accused to police is of no consequence and it cannot even be looked out by the Court.

8. Except this nothing could be pointed out to this Court to infer complicity of the present applicant in the crime in question. The learned counsel appearing for the applicant/accused has made statement that nothing is recovered from the applicant and he has falsely been implicated in the crime in question. On behalf of the respondent nothing has been shown by the prosecution which would demonstrate prima facie case against the applicant.

9. Giving third degree treatment to the apprehended accused and that too for extracting confession is the worst crime



in a civilized society which can be committed by a Police officer and that is how the Judiciary is witnessing large number of custodial deaths caused by men in uniform. This Court hopes and expects that the Director General of Police, Bihar State shall take necessary cognizance of this order to set his house right.

10. Considering the nature of the evidence against the applicant/accused, there is no other alternative but to release him on bail during pendency of the trial and hence, the order :-

i. The application is allowed.

ii. The applicant/accused in Crime No. 113 of 2021 registered with Baikunthpur Police Station for the offence punishable under Sections 30(a) and 41 of the Bihar Prohibition and Excise Act 2016 be released on bail on executing P.R. bond of Rs.15,000/- (Rupees Fifteen Thousand) on furnishing surety of the like amount to the satisfaction of the trial court with the following conditions: -

(I) The applicant/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II) The applicant/accused should cooperate the trial in expeditious disposal of the trial against him.



(III) The applicant should not repeat commission of similar offence in future and if he is found to be involved in commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicant in the instant case.

Let the copy of this order go to the Director General of Police, Bihar State, Patna as well as the jurisdictional Superintendent of Police with a direction that they should sent the report of the action taken in the matter to this Court directly.

The applicant to remove all office objections forthwith and the Registry to issue bail-writ as per this order only after removal of office objections by the appellant/accused.

Bhardwaj/-

(A. M. Badar, J)

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