

18.
25.06.2021
S.D.

Through Video Conference

W.P.A. 10555 of 2021

Mohammed Naim

Vs.

The State of West Bengal & Ors.

Mr. Haradhan Banerjee
Mr. Partha Pratim Mukhopadhyay
...For the Petitioner.

Mr. Pantu Deb Roy
Mr. Pannalal Bandyopadhyay
...For the State.

The petitioner's minor daughter Nasrin Parveen is now aged 15 years and a student of class VII was kidnapped on 22.2.2021 by one Bikash Chowdhury, son of late Ramesh Chowdhury, Banipur Mill Lane near the house of the petitioner and was subjected to penetrative sexual assault by the said accused Bikash Chowdhury resulting in her pregnancy. The petitioner alleged that the parents of the accused has been threatening the petitioner that the petitioner cannot get any relief because the police is under their control. An FIR was lodged by the petitioner on 22.2.2021 with the Officer-in-Charge, respondent no. 5 and on the basis of the

FIR, a specific case being Sankrail Police Station Case No. 230 of 2021 under Section 363/365 IPC was started and the investigation is being undertaken by conducting raid at the place of the accused arresting him, by examining the witnesses. The accused is now in judicial custody in connection with the said registered case.

The petitioner has alleged police inaction contending that it is the duty on the part of the police officer to obtain information about the alleged criminal activities of the accused and to trace out and to punish the offender for his guilt. But the police have failed to initiate the investigation fairly and diligently and did not proceed to investigate the matter in accordance with Section 157 of the Cr.P.C. to recover the said minor daughter of the petitioner from the clutches of the accused till the date of filing of this writ application. It is pointed out that the power and object of investigation as prescribed in the said Chapter XII is the procedure to be performed by the Police-authorities during investigation to set the criminal case in motion and to provide procedural safeguard so as to collect evidence during investigation and to arrest the accused to conduct the investigation into the offence after registration of FIR under Section 154 of the Cr.P.C. Thus, the duties enshrined in

Article 21 of the Constitution of India for fair investigation by collecting evidence to pinpoint the offenders rest on the statutory body and to recover the said minor daughter of this petitioner but the respondent nos. 4 and 6 have failed to take steps to recover the said minor daughter and apprehend the accused Bikash Chowhdury. The respondent authorities intentionally, for the reasons best known to them, are not performing their duties of investigation of cognizable offence as mentioned in the FIR till date.

Thus, it is complained that despite the complaint disclosing the commission of cognizable offence, the police have not performed their statutory duty in accordance with Section 154 to 157 Cr.P.C. nor collected any evidence during the course of investigation and even by arresting the accused and to recover the said minor daughter from the custody of the accused by taking medical examination till date and for last over four months.

Accordingly, the petitioner has sought for direction to investigate into the case by transferring the entire investigation to C.I.D., West Bengal to pinpoint the offender and to recover the said minor daughter of the petitioner.

A Coordinate Bench of this Hon'ble Court by order dated 14.6.2021 took notice of heinous act of the accused and

the Fir registered to the local police station for the reason that police had not taken any action by undertaking investigation and directed the Assistant Commissioner of Police, South Division-I, Howrah Police Commissionerate to submit report from the O.C., Sankrail Police Station as regards the whereabouts of the petitioner and present status of the investigation.

I have heard Mr. Haradhan Banerjee, learned Advocate assisted by Mr. Partha Pratim Mukherjee, Advocate on record of the petitioner who submits that there was police inaction and police have started action only upon the direction vide order dated 18.6.2021 by the Coordinate Bench of this Hon'ble Court. Now, Mr. Pannalal Bandyopadhyay led by Mr. Pantu Dey Roy for the respondent has pressed in service the report as sought for by this Hon'ble Court and in compliance thereof, the Assistant Commissioner of Police, South Division – I, Howrah Police Commissionerate has placed a report dated 24.6.2021 reproduced herewith.

“On 22.2.2021 Md. Naim (petitioner) submitted a written complaint before Officer-in-Charge of Sankrail Police Station, HPC mentioning that he had no trace of his minor daughter namely Nasrin Parveen since 10.30 A.M. of 22.2.2021. The petitioner also alleged that he came to know from his son-in-law that his daughter is staying with one Bikash Chowdhury at unknown place. On the basis of that written complaint Sankrail PS registered a specific case vide Sankrail P.S. Case No.

230 of 2021 dated 22.2.2021 under Section 363/365 IPC. Missing information has also been uploaded to National Tracking System accordingly.

SI Tufan Kanti Ghosh was endorsed for its investigation. He (I.O.) held raids at different places as per source information Golabari PS on 27.2.2021, Bahadreswar PS on 27.2.2021, Bantra PS on 15.5.2021 and Domjur PS on 4.6.2021 with the assistance of local police station to recover the minor daughter of the petitioner. IO submitted prayer for IMEI searching and received some lead there. IO also got Tower Location of the alleged persons which falls under Police Station – Jogacha, District – Vaishali, Bihar. Accordingly on 16.6.2021 IO along with team left for Vaishali Bihar and held raid on 17.6.2021 with the help of local police station. IO recovered the victim girl Nasrin Parveen and arrested the accused person namely Bikash Chowdhury and took them to Sankrail PS on 18.6.2021. IO produced the accused person before the Ld. Court, Howrah on 18.6.2021.

IO also arranged for the medico-legal examination of the victim girl where the Medical Officer clearly opined that “the victim is habituated in intercourse. As a result there is pregnancy which is to be confirmed by USG examination”. As per USG report of Howrah District Hospital the victim girl is pregnant for 23 weeks. IO also arranged for the medico-legal examination of the accused person where the Medical Officer clearly opined that “that there is nothing to suggest that the person is incapable of sexual intercourse”. IO also prayed for adding the section 376 (2)(n) of IPC & 4 of POCSO Act. IO also arranged for recording the statement of victim girl judicially where the victim girl stated that she left her home for quarrel with the family members and also denied of her kidnapping. The victim girl has been handed over to her parents after maintaining all legal formalities. The accused person is under Judicial Custody. The investigation of the case is proceeding.”

On perusal of the report, it appears that on the basis of

written complaint, O.C., Sankrail Police Station had registered Sankrail Police Station Case No. 230 of 2021 dated

22.2.2021 under Section 363/365 IPC and missing information was uploaded to National Tracking System accordingly as the allegation in the complaint was that the petitioner's minor daughter was kidnapped and was missing since 10.30 a.m. of 22.2.2021. The Sub-Inspector Tufan Kanti Ghosh was endorsed for investigation who conducted investigation by holding raid at different places as per source information under Golabari PS on 27.2.2021, Bahadreswar PS on 27.2.2021, Bantra PS on 15.5.2021 and Domjur PS on 4.6.2021 with the assistance of local police station to recover the minor daughter of the petitioner. After having received the tower location of the alleged offence which falls under Jogacha Police Station, Vaishali, Bihar, the Investigating Officer with team left for Vaishali, Bihar on 16.6.2021 and conducted raid on 17.6.2021 with the help of the local police station and has recovered the victim girl and arrested the accused Bikash Chowdhury who was produced before the learned Court, Howrah on 18.6.2021. It also reflects that the victim was subjected to medico-legal examination and the opinion of the Medical Officer has been obtained that the victim is habituated in intercourse and she was found pregnant as confirmed by the Medical Officer. It is pointed out that as per the USG report, Howrah District Hospital, the victim girl is

pregnant for 23 weeks. So, accordingly, considering the offence committed, the Investigating Officer has sought for adding Section 376(2)(n) of IPC and Section 4 of POCSO Act and arrangement has been made for recording the statements of the victim. Now, the victim has been handed over to the custody of her parents after maintaining all legal formalities and the accused is in judicial custody. The investigation is still going on and the final report is likely to be submitted. The report also reveals that the victim had left her home due to quarrel with her family members and has denied having been kidnapped by any person. In my view, this piece of report is the subject matter of decision before the trial in accordance with the evidence to be adduced by the prosecution, but, *prima facie*, if the victim is a minor girl, despite the fact that she might have consent for physical relation with the accused even then the offence under Section 4 of the POCSO Act would stand committed.

In the context of the above, to recover the victim girl from the place situated under Jogacha Police Station under the district Vishali, Bihar, and to track the accused and the victim, must have taken a considerable time. Having regard to the report, there appears no negligence and inaction on the part of the police authority to register the case of a cognizable

nature. Therefore, the prayer of the petitioner to transfer the investigation to CID, West Bengal cannot be countenanced to, however, the Investigating Officer is directed to conclude the investigation preferably within one month and to submit the final report before the Special Court under POCSO Act, Howrah.

Thus, the writ application being W.P.A. 10555 of 2021 is disposed of without any order as to costs.

(Shivakant Prasad, J.)