

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.18211 of 2015*****Maitree Sansad***

....

Petitioner

Mr. Ajoya Mohanty, Advocate

-versus-***State of Odisha and others***

....

Opposite Parties

Mr. Ishwar Mohanty, A.S.C. for State

Mr. A.K. Nath, Advocate for O.P. No.6

CORAM:**THE CHIEF JUSTICE****JUSTICE R.K. PATTANAIAK****ORDER****23.06.2022****Order No.****Dr. S. Muralidhar, CJ.**

17.

1. This petition was filed on 5th October 2015 in this Court in light of an unfortunate incident that took place on 26th September 2015, in which, a woman driving a car, which was stuck on the national highway (NH) at Vani Vihar Chhak outside the Utkal University in Bhubaneswar, as a result of a students' agitation.

2. It is stated that protesting against the cancellation of student body elections, a group of students of the Utkal University were protesting outside the main gate of the University adjacent to the NH on the fateful day. It appears that a group of students among them suddenly decided to block the NH as a result of which a traffic snarl ensued. Suman Sharma, a 43-year old woman, was driving her car at that point in time. In view of the blockade caused on the NH, and with the agitating students rushing towards her vehicle in a violent mood, she sought to take a u-turn to proceed towards

Acharya Vihar. However, the engine stalled; the agitating students surrounded the car and started beating it. When the Police intervened, they noticed that Suman Sharma had become unconscious behind the wheel. The police state that they shifted Suman Sharma immediately to the Capital Hospital, 5 kms away but the Doctors there declared her dead, on arrival. It is further stated that an inquest was held by the Executive Magistrate in the presence of her family members and witnesses. The report of the post mortem conducted by a team of doctors revealed no external injury and opined the cause of death to be “due to aneurismal rupture and its complications.” On a further query by the police, the Medical Officer is stated to have opined that “the deceased was suffering from abnormal dilation of blood vessel (aneurysm) in the circle of willies, present over the base of the brain, rupture of which leads to sub arachnoids haemorrhage. The detected disease is the instant cause of death of the deceased.” The autopsy report noted that the deceased was diabetic and was on oral hypoglycemic drugs.

3. The present petition was filed for directions to the police to trace out the persons responsible for the tragic incident and to constitute a special investigating team (SIT) to conduct an enquiry into the incident. Directions were also sought to the Inspector In-Charge (IIC) of the Saheed Nagar Police Station where the FIR was registered under Sections 143/341/304/147/149 IPC, to file a detailed affidavit as to the steps taken.

4. On 10th February 2016, the present petition was adjourned to enable the Additional Government Advocate to obtain the case diary of Saheed Nagar P.S. Case No.543 of 2015. Thereafter, for

three years, the petition was not listed even once. On 6th March 2019, learned counsel for the Opposite Parties were directed to place on record “the report which is relevant for adjudication of the case”. On 13th May 2019, the petition was admitted and asked to be added to the hearing list. Around this time, an affidavit was filed on behalf of Opposite Party Nos.3 to 5 (the police) stating that two of the accused persons had been arrested and that the following preventive measures had been taken:

“(i) Unauthorized occupations by non-students in Hostel No.7 inside Vani Vihar University Campus has been vacated recently, (ii) One side of the main gate is kept in closed condition always to avoid immediate flow of student from campus to the National Highway, (iii) Continuous liaisoning with student leaders/ University administration are being conducted to collect advance intelligence to prevent such incident & (iv) Permanent static force is deployed at Saheed Nagar P.S. to meet any eventuality.”

5. A rejoinder was filed to the said affidavit questioning the decision of Police to shift the deceased for treatment to Capital Hospital which was at a considerable distance when she could have been shifted to some other hospitals nearby. Reliance was placed on the decision of the Supreme Court in ***Rupinder Singh Sodhi v. Union of India AIR 1983 SC 65*** on the preventive steps that the police was expected to take to meet such contingencies.

6. On 27th January 2020, the following order was passed by this Court:

“Learned Addl. Government Advocate seeks some further time to obtain the up-to-date status of the case relating to the death of late Suman Sharma on

26.09.2015 at Vani Vihar Chhak, Bhubaneswar and also file a comprehensive affidavit indicating the steps taken by the opposite parties to meet the law and order situation as well as clearing the traffic in case of emergency.

List this matter on 02.03.2020.

A free copy of the order be handed over to the learned counsel for the State.”

7. The case was thereafter listed for hearing two years later on 9th February 2022 and the following order was passed by this Court:

“1. Despite time having been granted to file a comprehensive affidavit way back on 27th January, 2020, the Opposite Parties have not yet been filed any affidavit.

2. Subject to cost of Rs.5,000/- each being deposited with the Orissa High Court Bar Association Welfare Fund on or before 3rd March, 2022, a last opportunity is granted to the Opposite Parties i.e. the Government of Orissa, the Police Department (Opposite Parties 3, 4, and 5) and the Vice-Chancellor, Utkal University, Bhubaneswar (Opposite Party No.6) to file their respective counter affidavits by that date. The affidavits shall be accepted only upon production of proof of payment of such cost. Rejoinder thereto, if any, be filed before the next date.

3. List on 22nd March, 2022.”

8. Pursuant to the above order, costs were paid by Opposite Party No.6 and Opposite Party Nos.1 and 2 and their affidavits have been filed. A comprehensive affidavit has been filed by Opposite Party Nos.3 and 4 i.e. the Police.

9. Mr. Ishwar Mohanty, learned Additional Standing Counsel has taken the Court through the affidavit which sets out the standard

operating procedure (action plan) that is followed by the Police for emergencies including cases of road blocks in the capital city. Mention is made also of the arrangements made to regulate movement of Ambulance through VHF communication devices. It is further stated that “the patients requiring airlifting through air-ambulance had to inform in prior through the representative to O/o CP, DCP through a letter/E-mail depicting the hospital, destination, contact number of representative and tentative movement time. The letter is communicated to control room and traffic police station and a pilot vehicle is provided who escort the ambulance from Airport to hospital. The traffic posts in the route are intimated in advance about ambulance movement by which the enroute vehicles as well as vehicles from the feeder road are cleared by traffic personnel in advance. Any rasta rok/ road block are circumvented through continuous communication over VHF between the pilot vehicle and control room/ Traffic police station”.

10. The steps taken during Bundhs and agitations of which advance intimation is available with the Police, the arrangements made for emergency movements during road construction work, during religious congregation, festivals, rituals etc. have also been set out in the affidavit.

11. As regards the incident in question, it is stated that the decision by the students to block the traffic on the NH on the date of incident was a spontaneous one which was not anticipated. It is stated that in order to tackle a similar situation in future, the steps already set out in the earlier affidavit, which has been extracted hereinabove, have been taken. In addition, it is stated that:

“....

c. Security personnel have been deployed by the University authority 24x7 at the main gate to prevent entry of unauthorized persons inside the campus.

.....

f. One police officer in the rank of D.S.P. and 3 police constables have been deployed inside the campus to meet any eventuality.”

12. Mr. Ishwar Mohanty, learned Additional Standing Counsel points out that on the completion of investigation in the FIR, a charge sheet was filed on 22nd March, 2020 against nine accused persons for the offences punishable under Sections 341/304/147/149/294/323/353/506 IPC and Section 7 of the Criminal Law (2nd Amendment) Act, 1983. Two of the accused were arrested and NBWs are stated to have been issued against-vis the remaining 7 accused persons who remain absconding. The trial is yet to commence.

13. As regards shifting Suman Sharma to the Capital Hospital which is about 5 KMs from the location of the blockade, it is stated that the said hospital is among the best Government hospitals and she was taken there to ensure that she receives the best possible treatment. It is explained that “in a law and order situation when an injured is shifted for medical assistance, decision is taken impromptu. In case of serious patient, taking him/her to some normal dispensary and small hospital is never considered wise. Therefore Smt. Suman Sharma was shifted to Capital Hospital immediately for treatment”. The said explanation appears to be a

plausible one and the Court is unable to discern any deliberate lapse on the part of the police to ensure immediate medical attention being provided.

14. This Court has heard the submissions of Mr. Ajoya Mohanty, learned counsel for the Petitioner, who insisted on directions being issued to constitute an SIT and to fix responsibility on the Police personnel for the unfortunate death of Smt. Suman Sharma.

15. The incident that took place on 26th September 2015 is indeed an extremely unfortunate one. The consequences of road blockade can prove to be severe particularly where persons in need of urgent medical attention are unable to be taken for treatment in good time. Such a tragedy, at the time it happened, was perhaps not anticipated since it transpires that one section of the agitating students who were protesting peacefully, suddenly, without any prior intimation, decided to block the NH. The police appear to have been caught unawares. Although the entire papers concerning the inquest, the FIR, the post mortem reports and the chargesheet are available on record, learned counsel for the Petitioner was unable to point out if there was any lapse on the part of the police in investigating the case in accordance with law. He was also unable to demonstrate, even prima facie, the causal link between the unfortunate death of the victim and the police action or inaction as alleged.

16. In case of **Rupinder Singh Sodhi** (*supra*), some Members of Parliament and Lawyers had approached the Supreme Court for directions to the States of Haryana and Uttar Pradesh “to remove all obstructions on the highways and to allow unhindered and un-

intercepted the use of the highways, railways and airways without any discrimination against the Akali Sikhs on the ground of religion”. A Morcha had been planned for 19th November 1992 by certain Akali leaders which it was felt might interfere with the inauguration of the Asiad Games. This led to Haryana and Uttar Pradesh seeking to take measures to intercept the movement of the Akalis across the border to prevent the Morcha from taking place. The following observations were then made by the Supreme Court:

“2.Having given our anxious consideration to the submissions made by Mr. Hardev Singh, we agree that no one is entitled to barricade a highway so as to prevent members of the public from using it while they are on their lawful business in the pursuit of normal avocations of life. But the police, whose duty it is to enforce law and order in the wake of threatened mass agitations which are reasonably likely to lead to breach of public peace, are entitled in the discharge of that duty to impose reasonable restraints on the physical movement of members of the public in order to the protection of public property and the avoidance of needless inconvenience to other citizens in their lawful pursuits. But all such restraints on personal liberty, if at all, have to be commensurate with the object which furnishes their justification. They must be minimal and cannot exceed the constraints of the particular situation, either in nature or in duration. Above all, they cannot be used as engines of oppression, persecution, harassment or the like. The sanctity of person and of privacy has to be maintained at all costs and that cannot ever be violated under the guise of maintenance of law and order.

3. We feel uneasy and concerned to hear that policemen of certain States have violated the norms of decency in their dealing with the situation arising out of the Akali-Asiad tangle. We assume for lack of better evidence that the grievance made

by the petitioners before us is more the offspring of a natural feeling of resentment at being stopped and searched than of any substantial invasion of their personal freedom. If and when there is proof of latter, Courts may have to step in and stop the excesses. But the rule of law requires that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the objective is the securing of the paramount exigencies of law and order. Therefore, no Sikh can be allowed to be so treated if our Constitution has to have any meaning and effect.”

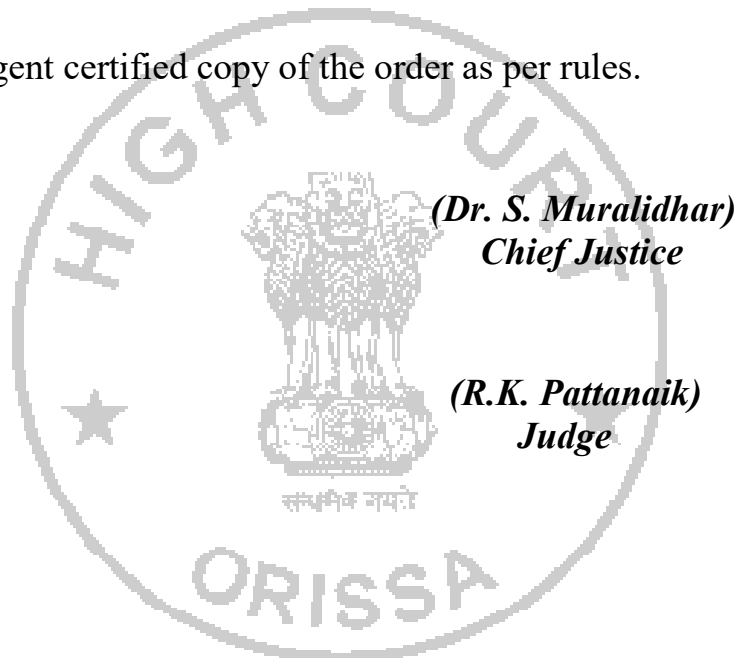
17. As far as the present case is concerned, the Court can only express its hope that the various measures and the standard operating procedure that the Police has drawn up for meeting the similar exigencies are actually implemented in letter and spirit. As regards the prayer for an SIT to be constituted, the Court is not persuaded that there has been any lapse in the investigation, particularly since the charge sheet has now been filed. However, rigorous steps have to continue to be taken to apprehend the absconding accused. A direction is issued to the Commissioner of Police, Bhubaneswar to constitute a special team to make concerted efforts to trace out and arrest the remaining accused. A compliance report be sent to this Court within two months.

18. A further direction is issued that the criminal case must be taken to its logical end with the proceedings against the two persons who have been apprehended to be commenced without any further delay by separating the trial against the remaining seven accused who are yet to be apprehended. The criminal proceedings against the two accused persons who have been apprehended must be concluded within a period of six months from today. A status report on the

progress of the criminal proceedings be sent to this Court once every two months from today till the conclusion of the proceedings. Advance copies of the compliance report as directed in para 17 above and the status report as directed in this para be provided to counsel for the Petitioner by the counsel for the State.

19. The writ petition is accordingly disposed of. However, the Registry will list the case for directions if the status reports as directed are not received within the stipulated time.

20. Issue urgent certified copy of the order as per rules.



S.K. Guin