

05.09.2023
Sl. No.5
akd

C. R. R. 2050 of 2023
in
C. R. M. (DB) 1388 of 2023

In Re: ***Court on its own Motion***

... .. Petitioner

Mr. Rahul Ganguly

... for the respondent-Vishal Periwal

Ms. Jhuma Sen
Mr. Dinesh Vishwakarma
Mr. Soumya De
Mr. Masum Ali Sardar

... .. for the victim

Mr. Saswata Gopal Mukherjee .. Id. Public Prosecutor
Mr. Nuguive Ahmed .. Id. Addl. Public Prosecutor
Mr. Rudradipta Nandy .. Id. Addl. Public Prosecutor
Ms. Trina Mitra

... .. for the State

1. Pursuant to our earlier direction, Investigating Officer is personally present before this court. His presence is noted and dispensed with.
2. The case involves gang rape of a victim. During trial, in course of her deposition, the victim noted the presence of one Vishal Periwal in the court room. She informed the trial Judge that the said person had met her at a café and tried to exert pressure upon her to withdraw the case. In this regard, she had lodged a General Diary.
3. Taking note of these facts, the trial Judge directed the police personnel present in court to detain the said Vishal Periwal and hand him over to the jurisdictional police station for necessary action. Thereafter, the apprehended person was handed over to the Lake Police Station. A separate criminal case being Lake Police Station Case No. 112 dated 17.05.2023 was registered against him under Sections 195A/506 IPC. Though the accused had been apprehended upon the instruction of the trial Judge, for reasons best

known to the police, he was released from custody and served with a notice under Section 41A of the Code of Criminal Procedure. Subsequently, he was enlarged on bail.

4. While hearing the bail application of a co-accused this court was apprised of the aforesaid disturbing facts. Consequently, a *suo motu* Rule was issued upon the said Vishal Periwal to show cause why his bail order be not cancelled.
5. Vishal Periwal appeared before this court and submitted affidavit.
6. This court also directed the Officer-in-charge, Lake Police Station and the Investigating Officer of the case to explain why Vishal Periwal after his apprehension upon directions of the trial court was permitted to leave without even executing a bond purportedly with reference to Section 41A of the Code of Criminal Procedure.
7. Gist of the plea taken by the police officers is that they were unable to comprehend the factual matrix and acted in terms of the directions in ***Arnesh Kumar vs. State of Bihar & Another***¹. In ***Arnesh Kumar*** (Supra), the Apex Court had directed in cases punishable with imprisonment upto seven years prior to arrest the police shall satisfy itself in terms of the check list prepared with reference to Sections 41(1)-(B) and 41(1)-(A) of the Code of Criminal Procedure whether arrest of accused is necessary in the interest of justice. One of the relevant considerations in the said check list is possibility of threat and intimidation of witnesses and commission of similar crime in future.
8. Judged from the nature of allegation levelled against Vishal Periwal it is difficult for this court to even imagine that a responsible police officer would come to an inference that there was no threat

¹ (2014) 8 SCC 273

perception upon a witness so as to take the softer course of issuance of notice under Section 41A of the Code of Criminal Procedure. Be that as it may, in the present case, the question of exercise of discretion to arrest by police does not arise. The accused had been apprehended on the direction of the Judge concerned. It was for all practical purposes an arrest at the behest of the judicial officer. This supervenes the discretion of the police personnel to invoke Section 41A of the Code of Criminal Procedure.

9. Accordingly, this court holds the acts of the Officer-in-charge, Lake Police Station and the Investigating Officer of the case to release the accused after his apprehension at the behest of a judicial officer clearly illegal and in derogation of comity and respect towards judicial authority and borders on contempt of court.
10. However, as there was no further allegation of misuse of liberty this court instead of taking Vishal Periwal into custody restricted his movements and passed other directions to ensure protection and safety of the victim who was deposing in court. Presently, deposition of the victim is complete and the accused has not violated the conditions of bail. Hence, this court is inclined to confirm the interim bail granted to him.
11. The matter would have ended there but for the strange and inexplicable police excesses which came to light during the hearing of the case.
12. The victim under the guise of investigation appears to have been unnecessarily harassed. In course of investigation on 29.06.2023, an electronic mail was sent to Narendrapur Police Station (within whose jurisdiction the victim resides) to intimate her to appear before the Magistrate on 05.07.2023 at 12 noon to record her

statement. The intimation was not communicated to the victim till the midnight between 4th/5th July, 2023.

13. Recalcitrance to give proper and timely notice to the victim to appear before the Magistrate is writ large from these facts. When confronted with the issue, affidavits were filed by the officers attached to Lake Police Station and Narendrapur Police Station.
14. Officer-in-charge, Narendrapur Police Station in his affidavit lays the blame upon his computer operator and states the said operator had overlooked the e-mail.
15. Conduct of the officers attached to the Lake Police Station is baffling. Necessary particulars including the telephone number of the victim were known to them. It is beyond comprehension why the victim was not directly contacted by the said police officers of Lake Police Station but a circuitous route was adapted by sending e-mail to Narendrapur Police Station to inform the date for recording statement before Magistrate. The matter did not stop at that.
16. Affidavit of the Officer-in-charge, Narendrapur Police Station reveals more distressing facts. It states when in the late evening of 04.07.2023 Narendrapur Police Station was again activated from the end of Lake Police Station, they immediately swung into action and notices were sought to be served by officers of the said police station through Whatsapp calls made to the lady at midnight. Thereafter, two police officers visited her residence at 2:00 A.M. at night.
17. The Apex Court in various cases deprecated the practice of midnight calls by police but those cases dealt with suspects who as per the police's version required surveillance to maintain law and order.

18. This Court has never come across a case where in the name of 'investigation' or 'interest of justice' as the deponents would persuade us to believe midnight knocks or Whatsapp calls are made to female victims of crime particularly that of sexual assault.
19. Whether these excesses were prompted by an insolent police force upon a victim who had the temerity to bring lack of police support in the face of brazen interference with administration of justice to the notice of this court? We hope not.
20. This court squarely deprecates the practice adopted by the Officers-in-charge, Lake Police Station and Narendrapur Police Station and all other police officers connected with the case. The police officers had overreached the judicial process and sought to release an accused whose apprehension had been directed by the trial Judge. Thereafter, in the name of recording the statement of the victim the latter was harassed through midnight Whatsapp calls and visit at her residence.
21. Right to privacy and dignity of every individual particularly a victim of sexual assault is the cornerstone of a civilized society. The Investigating Agency which is duty bound to preserve, protect and champion the fundamental right of privacy of the victim appears to have encroached upon it themselves. This factual background shows brazen disregard to the rule of law, privacy and dignity of a victim of sexual offence.
22. As the actions of the police officers have caused breach of fundamental right to privacy and dignity of the victim, this Court would otherwise be inclined to impose appropriate and just compensation payable by the police officers personally to the victim as a remedy for enforcement of her fundamental rights.

But learned Advocate for the victim submits that her client wishes the issue to be buried if unconditional apology is extended to her by the police personnel.

23. Accordingly, we dispose of this proceeding holding as follows:-

- i) Action of the Officer-in-charge, Lake Police Station and the Investigating Officer of Lake Police Station Case No. 112 in releasing Vishal Periwal notwithstanding his apprehension at the direction of the trial Judge is illegal and contrary to law;
- ii) When apprehension of an accused even in a case involving offences punishable to imprisonment upto seven years is directed by a judicial entity, exercise of discretion of arrest by the police officer does not subsist and the ratio in ***Arnesh Kumar*** (Supra) does not apply;
- iii) Service of notice upon a victim of sexual offence via Whatsapp messages and police visits at her residence during midnight is a clear breach of her fundamental right to privacy and dignity;

24. No police officer shall unless persuaded by extremely compelling circumstances relating to protection of life and safety of the victim shall not take recourse to measure like midnight calls/ visits which would impact the privacy, dignity and respect of the victim in her social surroundings. These excesses by the police officers are in violation of the fundamental right to privacy and dignity enshrined under Article 21 of the Constitution of India and the victim is entitled to compensation for vindication of such rights.

25. However, this Court has refrained from imposing just and fair compensation on the premise the victim does not wish to pursue the matter any further.

26. Nonetheless to uphold the rule of law including the right of privacy and dignity of the victim, we direct the Officers-in-charge, Lake Police Station and Narendrapur Police Station respectively shall issue separate written apologies to the victim for their conduct and shall pay a notional compensation of Rs.5,000/- each to the victim for vindication of her rights. The compensation shall be paid to the victim by the officers personally within seven days from date.

27. Rule is accordingly, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)