

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 06th April, 2023

Pronounced on: 20th April, 2023

+ **CRL.M.C. 2322/2023, CRL.M.A. 8752/2023 & CRL.M.A. 8753/2023**

STATE (NCT OF DELHI) THROUGH DEPUTY
COMMISSIONER OF POLICE SOUTH DISTRICT, DELHI

..... Petitioner

Through: Mr. Sanjeev Bhandari, ASC (CrI.)
with Mr. Sushant Bali, Mr. Kunal
Mittal and Mr. Saurabh Tanwar,
Advs. for the State.

versus

PRINCE

..... Respondent

Through: Appearance not given.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This petition has been filed for setting aside order dated 23rd February, 2023, 25th February, 2023, and 15th March, 2023 passed by the Ld. ASJ-03, South-East District, Saket Courts, New Delhi in Bail Application No. 551/2023 to the extent where the Ld. ASJ has called for Action Taken Report (ATR) from the Commissioner of Police and/or the Deputy Commissioner of Police. Further, relief is sought for setting aside directions by the Ld. ASJ for conducting inquiries against the petitioner and other police officers as also expunging of remarks and/or observations made in the said order relating to the police officers.

2. The background facts related to an FIR bearing No. 83/2023 PS Chitranjan Park registered under Sections 33/52 of the Delhi Excise Act, 2009 against the accused Prince. The accused filed the bail application seeking regular bail. On 23rd February, 2023, the Ld. ASJ while hearing the bail application noted that as per the previous involvement report of the accused, he was shown to be involved in 17 cases, but status of only 5 cases had been mentioned. The Ld. ASJ adverted to the Standard Operating Procedure dated 29th January, 2021 issued by the order of the Deputy Commissioner of Police issuing directions that all SHOs of South District were directed to complete the registers and Crime and Criminal Record of CCTNS of the respective police stations. Also, the record of the SCRB (State Crime Record Bureau) may also be updated expeditiously on regular basis. For this, it was directed that the SHOs shall personally liaise with the ACP/CRO to complete/update the record in SCRB. In the event any element of information in relation to a person is not complete regarding a particular FIR, the IO shall obtain the updated status from the concerned police station, prison, or court, and file additional information-sheet separately signed by him indicating such updated status, without making any interpolations in the SCRB report. It was further directed that before an SCRB report is filed, the SHO of the concerned police station shall counter-sign the SCRB report and the additional information-sheet, if any. This was as per the procedure laid down by this Court while hearing Bail Application No. 2470/2020 titled "***Ravi Kumar @ Shooter v. State (NCT of Delhi)***" vide order dated 16th December, 2020.

3. The Ld. ASJ noted that the SHO and IO PS CR Park had failed to comply with the said order as well as the SOPs, and directed DCP (South) to take action against SHO and IO PS C.R. Park for non-compliance of the said order and SOP and filed an ATR. Before the next date of hearing 25th

February, 2023, a report was submitted by the DCP (South) noting that lapses were found on part of the SHO and IO for non-compliance of the order dated 12th September, 2022 and the SOP dated 29th January, 2021 as also of SHO Kotla Mubarakpur for not updating the record of the SCRB. Consequently, an Explanation Calling Notice (ECN) was being issued to the SHO C.R. Park and SHO Kotla Mubarakpur for non-compliance of the above, and a show-cause notice for Censure was being issued to IO PS C.R. Park for submitting the previous conviction report without verifying the record. An updated involvement report was directed to be filed through the IO before the Court on 25th February, 2023.

4. On 25th February, 2023, the Ld. ASJ noted that an updated SCRB report has been filed which stated that out of 17 cases where the accused has been shown as being involved, the accused was found involved in only one case. 11 out of those cases, the accused were reported as untraced whereas, the accused has been shown as an acquitted in other two cases as well as not found involved in one more. In yet another case, the accused has been convicted and sentenced to undergone. The Ld. ASJ noted that the earlier involvement report of the accused presented a totally different scenario and was misleading and could have impacted the decision on bail. Despite noting the report submitted by the DCP, the Ld. ASJ further directed that the copy of the Court's order be sent to the Commissioner of Police and issued directions to take action against the SHO PS CR Park for violation of the SOP as well as file an ATR by 15th March, 2023. Another ATR was sought against SHO PS Kotla Mubarakpur, PS C.R. Park and the IO from the DCP (South). However, noting the arguments of the accused and the updated involvement report, the accused was granted bail by the Ld. ASJ on that day.

5. Consequently, a report dated 14th March, 2023 was submitted by the DCP (South) to the Ld. ASJ noting that SCN for censure and ECN has been issued as reported previously and the said officers has yet to submit their reply in defence. The report stated that disciplinary action initiated shall be concluded judiciously and an ATR shall be accordingly submitted. Another report dated 14th March, 2023 was issued with the approval of the Commissioner of Police, Delhi noting the above directions of the Ld. ASJ and also directing all ACPs, SHOs and Inspectors of South District to ensure compliance of the said SOP in letter and spirit.

6. On 15th March, 2023, even while the bail petition had already been concluded on the previous date, the Ld. ASJ perused the reports filed and then directed for a further Action Taken Report against the SHO PS C.R. Park to be called from the Commissioner of Police, and yet another ATR against IO and SHO PS Kotla Mubarakpur to be called from the DCP of South and listed the matter for 05th April, 2023.

7. The Ld. Additional Standing Counsel has contended that notwithstanding that there may have been an omission to comply with the SOP mandating updation of the SCRB, and a filing of a proper SCRB in Court, the Ld. ASJ pursuant to the first set of directions on 25th February, 2023, ought not to have issued directions for repeated ATRs on 25th February, 2023 and 15th March, 2023. As per the Ld. ASC, it was evident from the report filed by the DCP (South) on 24th February, 2023 that ECN had been issued to SHO C.R. Park and SHO Kotla Mubarakpur for non-compliance of the SOP as also an SCN for censure was issued to the IO PS C.R. Park for submitting the previous conviction report without verifying the record. This has been followed up by yet another report which stated that disciplinary action would take time as the said of personnel have still to file their reply. Subsequent directions even after the bail petition have

been concluded, as per the Ld. ASC, would amount to a violation of directions passed by this Court in *State v. Yogender Singh*, 2015 SCC OnLine Del 14203 where this Court has stated that if the Ld. ASJ was not happy with the investigation carried out it was enough to record the displeasure. This Court had disapproved of directions to send orders to the Commissioner of Police for taking action against erring police officers and submissions of Action Taken Report from him. This Court has stated as under:

“16. If the learned Addl. Sessions Judge was not happy with the way in which the investigation was being carried out, it was enough to record his displeasure. That has been done aptly by the learned Addl. Sessions Judge. What is not approved of is his direction to send his order to the Commissioner of Police for taking action against the erring police officials and submission of action taken report to him. This cannot be taken kindly to on two scores. By saying so, the learned Judge has pre-judged the action/inaction of the investigating agency and other police officers without affording any opportunity to explain the circumstances for delayed lodging of the first information report; and the Court, by seeking action taken report has in a way, encroached upon the administrative functions of the police administration and thereby has begun monitoring not the investigation of the case but the process of taking disciplinary action against the police officials. The Commissioner of Police, is left with no choice, once a Court of law holds that law has been flouted and, therefore, action be taken against the concerned persons. The disciplinary enquiry, therefore, would only be on paper when the offence is held by the court to have been committed.

17. The observations of the Court with regard to the failure of the investigating agency in taking prompt action is justified and is not being interfered with. What is unnecessary and unwarranted is the direction to the Commissioner of Police for taking action against erring police officials and submission of ATR in that regard.

Such directions cannot be countenanced in the eyes of law.

18. The direction of sending the order of the learned Addl. Sessions Judge to the Commissioner of Police for taking action and submission of ATR is, therefore, deleted and expunged from the order.”

8. Reliance was also placed on the decision of this Court in **Chandra Shekhar v. State (NCT of Delhi) & Anr.**, 2023 SCC OnLine Del 1236 where decisions relating to an alleged overreach by presiding officers have been traversed and it has been stated as under:

“12. The various decisions adverted to above are categorical in their disapproval of this overreach by judicial officers beyond their judicial functions. No purpose would be served in rephrasing or restating the statements already been made by the Hon'ble Supreme Court or this Court in decisions noted above. A referral to those decisions (including the extracts, supra) makes this incontrovertibly and categorically clear.

13. Not only are such remarks unnecessary but also could have serious implications on the careers of public servants, particularly for what seems in the facts and circumstances as perfunctory issues which have no huge negative impact on the actual administration of the criminal justice process. As discussed above, the Ld. ASJ ought not to have embarked on an inexorable quest when his original concern had been suitably addressed. The remarks and the phraseology used by the Ld. ASJ is summary in nature, penal in its scope, stigmatizing in its tone and tenor and as already motioned, beyond the ken of expected judicial conduct. In these facts and circumstances it is directed that all remarks against the petitioners in orders dated 21st January, 2023 and 31st January, 2023 passed by Ld., Additional Sessions Judge, South East, Saket Courts, New Delhi in Bail Appl. No. 202/2023 shall be expunged and all directions for conducting enquiries and explanations by the DCP or the Commissioner of Police shall be recalled and stand deleted from the said orders.”

9. Reliance was also placed on the decision in ***State (NCT of Delhi) v. Sumit Gupta***, 2023 SCC OnLine Del 1441 where this Court has stated as under:

“7. Also, no purpose would be served in rephrasing or restating the statements made by the Hon'ble Supreme Court in the decisions cited above, since a referral to the same and perusal of the extracts (supra), would make the position incontrovertibly and categorically clear. All is needed is for Courts to heed these views, observations and directions in their true letter and spirit and avoid unnecessary waste of judicial time.

8. In these facts and circumstances, it is directed that all extrajudicial remarks made against the police officers including the IO, DCP (South) and the Commissioner of Police are expunged from the orders dated 08th August, 2022, 17th August, 2022, 24th August, 2022, 29th August, 2022 and 31st August, 2022 passed by the Ld. ASJ, South District, Saket Courts in Bail Application 1395/2022 arising out of FIR No. 267/2022 PS Sangam Vihar, Delhi, as also all directions for conducting inquiries against police officers or notices that have been issued to the police officers for contempt or for criminal proceedings or otherwise are recalled and stand deleted from the said orders.”

10. Finally, the Ld. ASC drew attention of this Court to the decision in ***Ajit Kumar v. State (NCT of Delhi)***, 2022 SCC OnLine Del 3945 where it has been stated as under, in relation to similar directions being passed by the Ld. ASJ (who has passed these orders as well):

“39. This Court makes it clear once again that this order in no way undermines the majesty of the Court or the fact that the judicial directions need to be obeyed by the police officials concerned and the power of the courts to pass orders pointing out their disobedience or point out any fault in investigation, etc, cannot be questioned, however, in this regard, Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for

“Practice in the Trial of Criminal Cases” needs to be kept in mind and also the judicial precedents of the Hon'ble Apex Court and the High Court have to be kept in mind as guiding force while passing such remarks which amount to strictures.

40. The learned Trial Court could have forwarded the proceedings and the issue faced by the Court as well as the act of disobedience to the concerned Commissioner of Police Delhi to take action as per their departmental Standing Orders and the rules applicable to them. In the relevant cases, recourse could have been taken to the Delhi Police Act and the relevant Sections under law under which the Court can issue notice and initiate appropriate action if so warranted in a particular case. However, to direct the authority concerned to initiate action as mentioned in the impugned order and thereafter, ask for compliance to be filed and pass remarks as in the impugned order was unwarranted in the facts and circumstances of the case.

41. Judgments and orders passed by the courts are often permanent in nature, so is at times the stigma attached to a person suffered by virtue of an uncalled for remark unwarranted in the facts and circumstances of a particular case. As adjudicatory force of the country, judicial restraint as warranted by law and judicial proceedings is one of the qualities of a judicial officer.

42. Undoubtedly and there can be no two views about this that judicial orders and directions passed to ensure rule of law in society have to be obeyed and respected to achieve cherished goal of independence of judiciary, however, undesirable judicial strictures that penalize without enquiry, stigmatize without relevant proceedings with remedy of only being expunged as we have hierarchical system of judiciary have to be avoided. Social memories that stigmatize a person in society or in one's department or social circles are often as permanent as the judgments and orders.

43. For the reasons stated hereinabove, the remarks passed and directions issued against the petitioner in the

impugned order dated 06.09.2022, as reproduced in Para 8 of this judgment, do not appear to be in line with the facts of the present case and the position of law in that regard. Thus, the same are hereby expunged/deleted from the impugned order dated 06.09.2022.”

11. The Ld. ASC pointed out that the presiding officer who had passed the impugned remarks and directions in **Ajit Kumar** (*supra*) and **Chandra Shekhar** (*supra*) was the same Ld. ASJ.

12. Notwithstanding the above decision where facts were slightly different, it is noted as regards the impugned orders, the Ld. ASJ was possibly right in pointing out that a non-updated SCRB could not have been filed by the IO considering that it does not reflect the accurate record relating to the accused, and the relevant SOP issued by the Office of the Commissioner of Police dated 29th January, 2021 as also the order of the DCP (South) dated 12th September, 2022. However, the subsequent directions to take action against SHO and the IO PS C.R. Park may not have been totally appropriate. The Ld. ASJ was right in requisitioning a non-updated SCRB to adjudicate the bail petition which was at hand, and also to bring to the notice of the senior police officers *viz.* DCP (South) that compliance of the SOP by the Commissioner of Police and the order by DCP (South) have not been done in this matter. But the direction to initiate disciplinary proceedings and to take action against the SHO and the IO should not have been immediately issued, without ascertaining the actual facts relating to the same from the Police Department.

13. Notwithstanding the same, the DCP (South) did file a report on 24th February, 2023 fully complying with those directions of the Ld. ASJ and stating that an ECN and an SCN have been issued including on SHO Kotla Mubarakpur for not updating the records and also that an updated record was being filed for the perusal of the Ld. ASJ to adjudicate the bail

petition. Matters ought to have rested here and it was upto the Police Department to proceed further with their disciplinary proceedings since that would be an internal matter which would have to proceed in accordance with law and procedure. However, despite this report the Ld. ASJ yet again issued directions to take action against the SHO C.R. Park and for ATRs on SHO PS Kotla Mubarakpur as well as the IO. The DCP (South) duly responded stating that the disciplinary proceedings were on and would take some time. An order was also issued reiterating the elements of the SOP with approval of the Commissioner of Police. At this stage, the bail petition was also concluded and the Ld. ASJ has become *functus officio* to that extent. However, issuance of further directions on 15th March, 2023 seeking an ATR from the Commissioner of Police and the DCP (South) was certainly not required. As noted above in **Yogender Singh** (*supra*) if the Ld. ASJ was not happy with the way investigation was being carried out, it was enough to record his displeasure, but what was not approved of was his directions to send orders to the Commissioner of Police for taking action against the erring police officers and submissions of Action Taken Reports to him. This amounted to pre-judging the action of the investigation agency and the police officers without affording any opportunity to explain, and encroached upon the administrative functions of the Police Administration.

14. Considering that previous directions of the Ld. ASJ dated 23rd February, 2023 and 24th February, 2023 had already been complied with and reports have been filed on behalf of the Commissioner of Police and the DCP (South), further directions in order dated 15th March, 2023 are, therefore, unnecessary and are set aside. The bail petition had already concluded on the previous date and the issue of taking action against the allegedly erring police officers was an administrative function of the Police

Department. Having pointed out that the SOP may not have been complied with by the erring police officers, was adequate enough to alert the Police Department of omissions in their process which could impact administration of justice by the Courts.

15. The subsequent disciplinary action was an internal matter and cannot be monitored by the Ld. ASJ sitting in the bail jurisdiction. Adverse remarks which have been made by the Ld. ASJ prejudging the matter and noting the failure to comply by the SHO and IO may, therefore, be expunged as also directions to take action.

16. However, the DCP (South) ought to ensure that the SOPs are complied with relating to SCRB updates and filing and the proceedings as commenced as per report dated 24th February, 2023 against the allegedly erring officers is processed in accordance with law and internal procedures of the Police Department.

17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

19. Judgment/Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 20, 2023/MK