

\$~

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

%

Reserved on: 19.12.2022

Pronounced on: 05.01.2023

+ **W.P.(CRL) 2984/2022**

MR. SAAD AHMED SIDDIQUI (IN J.C.) & ORS.

...Petitioners

Through: Mr. M. Hasibuddin, Advocate

versus

THE STATE (GOVT. OF NCT OF DELHI) ...Respondent

Through: Ms. Rupali Bandhopadhyaya,
ASC for the State with Mr.
Akshay Kumar and Mr.
Abhijeet Kumar, Advocates
with SI Dheeraj, P.S. Jam
Nagar.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") has been filed by the petitioners for issuance of writ/orders/directions particularly in the nature of mandamus and certiorari with the prayer that petitioners be released from judicial custody, in interest of justice, till the pronouncement of order on sentence in Sessions Case No. 272/2021, pending before the learned Additional Sessions Judge-02, South-East, Saket Courts, Delhi.

2. The case against the present petitioners relates to one FIR bearing no. 97/2021, registered at Police Station Jamia Nagar for offences punishable under Sections 364A/394/397/411/34 of Indian Penal Code, 1860 (hereinafter “IPC”).

3. Succinctly, the case of prosecution before the learned Trial Court was that the present FIR was registered on the complaint of one Harsh who had stated that he alongwith his two friends namely Yash and Sameer had gone to a restaurant at around 8:50 PM on 20.03.2021 in the i20 car of complainant. It was alleged that when complainant was purchasing certain food items, five/seven boys came on scooty and a car and started beating Yash and Sameer who were sitting inside the i20 car of complainant and thereafter fled away by taking the said car, carrying Yash and Sameer as well. Search and investigation was carried out, the car was identified, chased and caught, and two accused i.e. petitioner no. 1 and petitioner no. 2 were found sitting in the car, and robbed money to the tune of Rs.13,900/- and Rs.40,000/- respectively was recovered from their possession. It was further revealed during investigation that all the accused persons had robbed the car of complainant as well as kidnapped Yash and Sameer and threatened them of dire consequence if Rs. 5 lakhs were not paid to them as booty amount. Petitioner no. 3 was arrested eventually and other co-accused persons could not be traced.

4. After completion of investigation, chargesheet was filed under Sections 365/364A/368/394/392/411/34 of IPC and charges were framed under Sections 364A/394/397/411/34 of IPC by the concerned

Court against all the petitioners. The learned Trial Court *vide* judgment dated 25.11.2022 acquitted the petitioners of charges under Sections 364A/394/397 of IPC and convicted them for offence punishable under Sections 363/411 of IPC. The operative portion of judgment dated 25.11.2022 reads as under:

“...Offence Made Out

33. Based on testimony of prosecution witnesses, I find that the only facts which were proved are:

- a) That accused persons had kidnapped Yash and Sameer on 20.03.2021.*
- b) That car in question, being owned by complainant was recovered from accused persons.*

34. Based on aforesaid finding, offence of kidnapping punishable u/s 363 IPC and dishonestly receiving stolen property punishable w/s 411 IPC are made out.

35. Prosecution failed to prove that accused persons had claimed ransom after kidnapping Yash and Sameer. Prosecution failed to prove that Yash and sameer were robbed with any cash amount by accused persons, by showing screwdriver. Therefore, offences punishable u/s 364A/394/397IPC were not proved beyond reasonable doubt. All accused are acquitted of the offences punishable under Section 364A/394/397 IPC.

36. Accused persons are therefore, convicted for offences w/s 363/411 IPC only...”

5. Thereafter, the petitioners were taken into custody and *vide* separate order dated 25.11.2022, the learned Trial Court adjourned the matter to 04.02.2023 for hearing arguments on sentence.

6. Learned counsel for petitioners states that this is a peculiar case

wherein petitioners have been convicted under Section 363 read with Section 411 of IPC *vide* judgment dated 25.11.2022, and the petitioners were taken into custody, however, learned Trial Court had adjourned the matter for hearing arguments on sentence on 04.02.2023. It is further stated that petitioners are in judicial custody since 25.11.2022 and there is no provision in Cr.P.C to challenge the judgment without passing of order on sentence. It is further averred that petitioners have already remained in judicial custody as under trial prisoners for around four (04) months. Therefore, a prayer has been made that till arguments are heard and order is pronounced on sentence, the petitioners be admitted to bail.

7. Learned ASC for the State also submits that the time period between pronouncement of judgment convicting accused persons and the order on sentence must be reasonable.

8. The arguments of either side have been heard and the case file has been perused.

9. The indulgence of this Court has been sought in a situation where the petitioners, after the pronouncement of judgment of conviction, were taken into judicial custody and the date for hearing arguments on point of sentence was fixed ten weeks thereafter. It is prayed that since there is no provision in Cr.P.C. to either challenge conviction or seek suspension of sentence and bail without passing of order on sentence, the petitioners, in the meanwhile, may be released from judicial custody.

10. Shorn of unnecessary details and coming directly to the impugned order, the learned Trial Court after convicting the accused persons/petitioners for offences punishable under Sections 363/411 of IPC *vide* judgment dated 25.11.2022, adjourned the matter to 04.02.2023 for hearing arguments on sentence, and in the meanwhile, directed the convicts as well as State to file certain affidavits in compliance of directions passed by a Three-judge bench of this Court in *Karan v. State NCT of Delhi, Crl.Appeal No.352/2020*, decided on 27.11.2020. The relevant portion of order dated 25.11.2022 reads as under:

*“...Present: Sh. L.D.Singh, Ld. Addl. PP for State
All accused on bail with counsel Sh. M. Hasibuddin*

Vide my separate Judgment of even date, all accused are acquitted of the offences punishable under section 364A/394/397 IPC.

However, they are convicted for offences u/s 363/411 IPC.

In the wake of directions of Hon’ble High Court in case titled as Karan Vs. State NCT of Delhi, Criminal Appeal No.:352/2020, decided on 27.11.2020,

- *Accused persons are directed to file affidavit regarding movable/ immovable assets in the court today. Same be sent to DLSA, South-East on or before next date of hearing for verification.*
- *Prosecution is directed to file cost of prosecution on or before next date of hearing.*
- *Issue summons to victims, to be executed by SHO concerned and issue summons to IO concerned to appear in person on next date of hearing.*
- *Jail Superintendent, Tihar is directed to file Nominal Role Report of accused persons, returnable by next date of hearing.*

Put up for arguments on sentence on 04.02.2023... ”

11. At the outset, it will be necessary to take note of the directions and guidelines as issued by this Court in *Karan v. State NCT of Delhi* (*supra*), which are reproduced as under:

“...173. After the conviction of the accused, the Trial Court shall direct the accused to file the affidavit of his assets and income in the format of Annexure-A within 10 days.

174. After the conviction of the accused, the Court shall also direct the State to disclose the expenses incurred on prosecution on affidavit along with the supporting documents within 30 days.

175. Upon receipt of the affidavit of the accused, the Trial Court shall immediately send the copy of the judgment and the affidavit of the accused in the format of Annexure-A and the documents filed with the affidavit to DSLSA.

176. Upon receipt of the judgment and the affidavit of the accused, DSLSA shall conduct a summary inquiry to compute the loss suffered by the victims and the paying capacity of the accused and shall submit the Victim Impact Report containing their recommendations to the Court within 30 days. Delhi State Legal Services Authority shall seek the necessary assistance in conducting the inquiry from SDM concerned, SHO concerned and/or prosecution who shall provide the necessary assistance upon being requested.

177. The Trial Court shall thereafter consider the Victim Impact Report of the DSLSA with respect to the impact of crime on the victims, paying capacity of the accused and expenditure incurred on the prosecution; and after hearing the parties including the victims of crime, the Court shall award the compensation to the victim(s) and cost of prosecution to the State, if the accused has the capacity to

pay the same. The Court shall direct the accused to deposit the compensation with DSLSA whereupon DSLSA shall disburse the amount to the victims according to their Scheme...”

12. After perusing the aforesaid guidelines as well as the Annexures of the judgment in ***Karan v. State NCT of Delhi*** (*supra*), the timeline for filing of relevant documents for the purpose of ascertaining the victim compensation can be summarized as follows: (i) filing of cost of prosecution by the State within 30 days from date of conviction, (ii) filing of affidavit disclosing income and assets by accused within 10 days from date of conviction, and (iii) assessing the paying capacity of accused, conducting a summary inquiry to compute the loss suffered by victims, and preparing and filing of Victim Impact Report by DSLSA within 30 days from the date of conviction.

13. The Hon'ble Supreme Court in ***Ankush Shivaji Gaikwad v. State of Maharashtra*** (2013) 6 SCC 770 held that before passing an order on sentence, the Courts must resort to an enquiry to determine whether it is necessary to award compensation in a case or not. The concluding portion of said decision reads as under:

“62. To sum up: While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to

consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.”

14. In the present case, however, the matter was adjourned to a date, 70 days (ten weeks) later than the date of conviction, for hearing the parties on point of sentence. Moreover, this is a case where the convicts i.e. petitioners herein were taken into custody at the time of pronouncement of judgment of conviction. While being in judicial custody, post the pronouncement of judgment of conviction, the petitioners are remediless to either challenge their conviction or seek suspension of sentence and grant of bail, till the time order on sentence is also passed. The criminal courts, though are duty bound to consider the rights of victim, they cannot, at the same time, overlook or brush aside the rights of an accused or a convict. A person who gets convicted has a statutory right to challenge the conviction in a higher court as well as seek suspension of sentence. However, such statutory right can only be exercised once the order on sentence is also pronounced by the Court concerned, as sentence is a part of the judgment in a trial. In case a Court takes an accused into custody after pronouncement of judgment and adjourns the matter to a long date for the purpose of hearing the parties on point of sentence, a valuable right of the convict remains

suspended, since as already stated above, the person can neither challenge the conviction nor seek suspension of sentence and bail till order on sentence is also pronounced. The present case falls into this category, as the learned Trial Court adjourned the matter after convicting the accused to a date more than 02 months whereas the petitioners in this case were also taken into custody after pronouncement of judgment of conviction.

15. It seems that the learned Trial Court has totally ignored the valuable right of speedy trial to the accused. It is the duty of the courts to ensure that the rights of the victim and of the accused are balanced. No doubt, striking a balance is a delicate task, however, the canons of criminal justice system so demand that an accused who is in judicial custody as well as any other person facing criminal trial, especially, those who are in judicial custody be given speedy trial by ensuring early hearings. In this regard, a perusal of the record shows that the learned Trial Court has, in most casual manner, passed the order dated 25.11.2022, as reproduced in para 10 above. The said order sheet records that the accused persons were on bail at the time of pronouncement of judgment of conviction, but it is strange that though accused persons were taken into custody on the same day, neither the reasons for the same nor the fact that they have been taken into judicial custody finds mention in the said order sheet. It is reflected only through this Writ Petition, that the accused persons are in judicial custody, whereas the judicial record of the learned Trial Court does not reflect the same. This amounts to a serious lapse on the part of learned

Trial Court. The courts have to remain conscious of the fact that taking a person into judicial custody is taking away a valuable right of a person. The learned Trial Court, while fixing the matter after 70 days for hearing arguments on sentence, probably did not realise that the accused will be rendered remediless during this period, as an appeal against conviction cannot be filed till the order on sentence is passed. A reference in this regard can also be made to the recent judgment of Hon'ble Apex Court in *Sukhpal Singh Khaira v. The State of Punjab 2022 SCC OnLine SC 1679* wherein it has been categorically held that a judgment convicting an accused is considered to be complete in all respects only when the sentence is imposed on the convict.

16. This Court is further constrained to observe that the compliance of the judgment of this Court in *Karan v. State NCT of Delhi (supra)*, as done by the learned Trial Court in order dated 25.11.2022, is in fact, not in consonance with the directions issued in the said decision.

16.1. The learned Trial Court directed the accused persons to file their affidavit of income and assets on the same day the conviction was announced. This would amount to giving no time to the accused to prepare such affidavit, if immediately after announcing judgment, he is asked to file such affidavit, which may require time to prepare. The learned Trial Court further directed that the said affidavit be forwarded to DLSA, South-East for verification, "on or before the next date of hearing" which was also directed in casual manner. This is totally in ignorance of the directions issued and recorded in para 175 of judgment of *Karan v. State NCT of Delhi (supra)*. Further, no specific direction

has been issued by the learned Trial Court for filing of Victim Impact Report within 30 days.

16.2. Similarly, the learned Trial Court also directed the prosecution to file cost of prosecution “on or before the next date of hearing”. This also has been done not in consonance with the directions issued and recorded in para 174 of judgment of *Karan v. State NCT of Delhi (supra)*.

17. Even though the learned Trial Court had to comply with the guidelines of this court as laid down in the case of *Karan v. State NCT of Delhi (supra)*, it is to be kept in mind that said judgment lays down specific timeline for the procedure that it mandates.

17.1. As per the said decision, the affidavit of assets and income of the accused is to be filed within 10 days of the conviction. The same is to be immediately forwarded to DSLSA. The DSLSA has to assess the paying capacity of the accused and conduct a summary inquiry to compute the loss suffered by the victims and prepare the Victim Impact Report, and file the same within 30 days of the conviction.

17.2. Further, though needless to explain, the process of filing of cost of prosecution by the State within 30 days is not dependent upon the accused first filing his income affidavit or DSLSA filing Victim Impact Report. The State is required to file the cost of prosecution within 30 days from conviction only, and there is no clash or dependence on accused filing his income affidavit and the State filing the cost of prosecution as both are independent of each other. Thus, time period

i.e. 30 days, for filing of cost of prosecution and filing of Victim Impact Report runs concurrently. The Victim Impact Report will have to be filed after the affidavit of income and assets is filed by the accused before Trial Court and same is forwarded to DSLSA, since preparation of Victim Impact Report depends on receipt of affidavit of accused by DSLSA.

17.3. The Trial Courts are also obliged to issue specific directions on the same day itself, when the judgment of conviction is pronounced, with respect to filing of affidavit by the accused and filing of cost of prosecution by State and Victim Impact Report by DSLSA within specified time period.

17.4. Moreover, it is also clear that the period of 10 days or 30 days as mentioned in the decision of *Karan v. State NCT of Delhi (supra)* is the maximum period, and not the minimum time period. To elaborate, the period of 10 days for filing of affidavit of income and assets by the accused is the outer limit for filing the same, and similarly, assessing the paying capacity of accused and filing of Victim Impact Report by DSLSA, and filing of cost of prosecution by State within 30 days is also the outer time limit.

17.5. When an accused is in judicial custody, it is the duty of the Court to provide early hearings by providing short dates to ensure speedy trial, depending on facts and circumstances of each case. Once the accused was taken into judicial custody in the present case, the learned Trial Court should have specifically directed that the affidavit be filed by the accused on a specific date, which shall be immediately

forwarded to DSLSA on same day or next day. It could have also called for the Victim Impact Report within a period, lesser than 30 days. Furthermore, as many trial courts do, a shorter period of time could have been given for filing of cost of prosecution by the State. Such steps and measures are of immense significance in cases where an accused is taken into custody at the time of conviction.

17.6. Thus, if deemed fit and if the circumstances so demand, the Trial Courts can ask the necessary parties to file their respective documents within a period, shorter than what is stipulated in judgment of *Karan v. State NCT of Delhi (supra)*, since the period of 10 days granted to the accused for filing of his affidavit of assets and income is an outer limit for filing the same, and accused can be asked to do the same within a shorter period of time. Similarly, the State and DSLSA can also be asked to file cost of prosecution and Victim Impact Report respectively, within a shorter period of time, as period of 30 days is again an outer limit. The same will save the time of the Court and will considerably reduce the period of agony of accused who is taken into custody after pronouncement of judgment and is rendered remediless till the order of sentence is passed.

17.7. However, while issuing the directions in compliance of *Karan v. State NCT of Delhi (supra)*, if the Trial Court deems it appropriate to grant a shorter period of time for filing of documents as mentioned above, it shall ensure that the said period is not wholly unreasonable since it is to kept in mind that assessment of paying capacity of accused and preparation of Victim Impact Report by DSLSA will take a

reasonable period of time.

18. In such circumstances, this Court holds that the learned Trial Court failed to follow the timeline for filing of affidavits by convicts and State, Victim Impact Report, as well as summoning the victims, though the same should have been adhered with utmost precision, and the said documents could even have been called for within a shorter period of time, more so because the petitioners were taken into custody after pronouncement of judgment of conviction and were rendered remediless, who had to approach this Court by way of present petition. The long date of 70 days given for hearing arguments on sentence was not reasonable, since the accused persons had been taken into custody.

19. Considering the overall facts and circumstances of the case, the date fixed by the learned Trial Court for hearing arguments on sentence i.e. 04.02.2023 stands cancelled. The parties are directed to appear before the learned Trial Court on 09.01.2023 when the Court shall take up the matter for hearing, and shall call for reports [in compliance of judgment of *Karan v. State NCT of Delhi (supra)*] expeditiously by specifying the dates for calling such reports, if not received yet, and also fix earliest possible date to hear arguments on sentence as per law.

20. A copy of this judgment be immediately forwarded to the learned Trial Court through Registry for information and compliance.

21. A copy of this judgment be circulated by the learned Registrar General of this Court to all the District Courts in Delhi and be also sent to the learned Director (Academy), Delhi Judicial Academy for the

purpose of sensitizing judges dealing with the criminal cases that they need to pay special attention and show sensitivity in cases where accused(s) languish in jail as under trials and also those cases and circumstances wherein the accused at times may be rendered remediless, so that the lapses which are against the principles of natural justice and criminal justice system do not occur.

22. In view of the aforesaid directions, the petition is disposed of.

23. A copy of this judgment be given *Dasti* under the signature of Court Master.

SWARANA KANTA SHARMA, J.

JANUARY 5, 2023/zp

