

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 18752 of 2024

Reserved on : 23.09.2024
Pronounced on: 27.09.2024

X (Victim)

...Petitioner

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Antarikhya Basu

Mr. Moyukh Mukherjee

Mr. Sayan Mukherjee

... .. for the petitioner

Mr. Amitesh Banerjee, SSC

Ms. Tarak Karan

... .. for the State

Rajarshi Bharadwaj, J:

1. Learned Counsel appearing for the petitioner submits that the petitioner is a working lady at a managerial post of a private company and her husband is an IAS officer posted outside West Bengal. The petitioner is an unfortunate victim of a heinous crime of sexual abuse, allegedly committed by respondent no. 9 on two separate occasions. The first incident occurred on 14th July, 2024 at 11:30 PM, and the second on 15th July, 2024 at 6:30 AM, both at her residence. Following these incidents, despite the gravity of the offenses, which

warranted charges under sections 62/64 of the Bharatiya Nyaya Sanhita (hereinafter referred to as 'BNS'), 2023, the case was instead registered under less severe sections (74/75/76/79/115/351 of BNS, 2023). It is submitted by the Learned Counsel that this dilution of charges was due to tampering with the written complaint by respondents no.6, 7 and 8, being the police personnel attached to the Lake Police Station.

2. On 15th July, 2024, the petitioner filed a First Information Report (FIR) with the Lake Police Station and on the same day, she was subjected to coercion and intimidation by the son and wife of respondent no. 9, who were allegedly brought to the police station by the officers to pressure her into withdrawing her complaint. Despite these serious accusations, no scrutiny/investigation has been made of the CCTV footage from the Lake Police Station from 4:00 PM to 8:00 PM on that day, despite the petitioner's explicit request.

3. On 16th July, 2024, respondent no. 9 obtained bail in the case (Lake Police Station Case No. 133 of 2024) through an order passed by the Chief Judicial Magistrate, Alipore as the bail order was facilitated by a "nil" checklist submitted by the investigating officer, which lacked any substantial reasoning or supporting material for the accused's arrest.

4. On 19th July, 2024, the petitioner provided a detailed statement before the Magistrate under section 183 of the Bharatiya Nagarik Suraksha Sanhita (herein after referred to as BNSS), 2023. In her statement, she recounted the incidents of rape, specifically stating that respondent no. 9 disrobed her, forcefully ravished her; and discovered during the act that she was menstruating. This affirmed that the crime took place on the morning of 15th July, 2024. Additionally, the petitioner makes serious accusations in her statement made before the Judicial Magistrate on 19th July, 2024 against

Kalpana Roy, the female police officer of the Tiljala Police Station, alleging blatant collusion with the respondents.

5. The petitioner filed the present writ petition on 23rd July, 2024, highlighting procedural lapses and tampering of evidences by the police in handling her case. Despite the FIR being registered and the writ petition being filed, critical steps such as the medical examination of the petitioner, the change of investigating agency and the seizure of CCTV footage from the place of occurrence and the police station had not been conducted by the time of filing of the writ petition rather the petitioner underwent a medical examination at her own volition at MR Bangur Hospital on 15th July, 2024. Therefore, owing to social stigma, and uncomfortable situation created at the MR Bangur Hospital on 15th July, 2024, she was only medically examined and treated for the injuries on her face, head, hand and inner lips.

6. On 09.08.2024, the petitioner was informed via e-mail by a lady sub-inspector namely, Arpita Bhattacharyya of Karaya Women Police Station that the case has been transferred to Karaya Women Police Station and that sections 62/64 of BNS had been added to the case in light of her statement made before the Judicial Magistrate, 10th Court, Alipore. The e-mail also notified her that L.S.I. Arpita Bhattacharyya is the investigation officer and she would need to undergo a medico-legal examination on 20.08.2024, which was 35 days after the incident and which the petitioner duly complied with.

7. The petitioner further submitted that, in violation of the proviso to sections 173 and 176 of BNSS, 2023, which mandate that a woman's statement be recorded by a female police officer at a place of her choice, respondent no. 6 (the Officer-in-Charge of Lake Police Station) failed to assign a female officer and instead deputed a male investigating officer (respondent no. 8). The male officer then allegedly tampered with the original complaint, as

admitted by the police in their affidavit-in-opposition, where they conceded that they had altered the draft of the written complaint before printing it.

8. The petitioner further submitted that, in violation of the proviso to sections 173 and 176 of BNSS, 2023, which mandate that:

“173. (1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed may be given orally or by electronic communication and if given to an officer in charge of a police station, —

(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;

(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence under section 64, section 66, section 67, section 68, section 70, section 73, section 74, section 75, section 76, section 77, section 78 or section 122 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 67, section 68, sub-section (2) of section 69, sub-section (1) of section 70, section 71, section 74, section 75, section 76, section 77 or

section 79 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (6) of section 183 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant or the victim.

(3) Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in-charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence, —

(i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or

(ii) proceed with investigation when there exists a prima facie case.

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either

investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which he may make an application under sub-section (3) of section 175 to the Magistrate.”

Therefore, Respondent no. 6 failed to assign a female officer and instead deputed a male investigating officer (respondent no. 8). The male officer thereafter allegedly tampered with the original complaint, as admitted by the police in their affidavit-in-opposition, wherein they have conceded that they had altered the draft of the written complaint before printing it.

9. The investigating officer who tampered with the written complaint continued to carry the case docket to court hearings, even after being censored by the Commissioner of Police on the direction of the Learned Chief Judicial Magistrate, Alipore, reflects further procedural irregularities. The case was eventually transferred to Karaya Woman Police Station on 02nd August, 2024, but the harm caused by the earlier lapses had already impacted the proceedings.

10. The petitioner contends that this case exemplifies the state's failure to protect victims of sexual crimes, as the police colluded with the accused to dilute the charges of rape and enabled the accused to secure bail based on a flawed submission. The petitioner was also subjected to pressure and intimidation, even within the police premises, underscoring the urgent need for judicial intervention in the interest of justice.

11. In response to the petitioner's submissions, Mr. Amitesh Banerjee, Learned Senior Standing Counsel for the State, submits that on 15th July, 2024, at approximately 14:15 hours, the complainant/writ petitioner approached the Lake Police Station to file a complaint. Instead of submitting a formal written complaint, the complainant used her friend's mobile phone to

send a WhatsApp message, which was received by the on-duty officer, Mr. Tapan Chakraborty. The officer provided a printed copy of the message to the complainant. Dissatisfied with the format of the WhatsApp complaint, the complainant was subsequently asked to narrate the incident to Lady ASI Sujata Burman, and her oral statement was video-recorded pursuant to Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Upon identifying inconsistencies between the WhatsApp message and the oral statement, the complainant was instructed to file a written complaint, duly signed by her.

12. It is further submitted that the petitioner's assertion that the investigation was improperly conducted by a male officer lacks merit. In accordance with Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023, it is mandated that only the recording of the complainant's statements be conducted by a female officer, whereas the investigation per se is not subject to the same requirement.

13. Subsequently, the complainant complied by submitting a written complaint at around 18:27 hours on 15th July, 2024. On the basis of this complaint, Lake Police Station registered Case No. 133 dated 15th July, 2024, under Sections 74, 75, 76, 79, 115, and 351 of the Bhartiya Naya Sanhita, 2023. Since no Lady Sub-Inspector was available at the Lake Police Station on the same day, a Lady Sub-Inspectress, one Kalpana Roy, was summoned from Tiljala Police Station on 16th July, 2024. Upon her arrival, Sub-Inspectress Kalpana Roy recorded the complainant's further statement via video in compliance with Section 180 of the BNSS, 2023. It is noteworthy that during this subsequent statement, the complainant did not accuse the FIR-named accused, respondent No. 9, of inserting his finger into her private parts or brandishing a firearm.

14. The respondent further submits that prior to filing the written complaint, the complainant was subjected to a medical examination on 15th July, 2024, at approximately 12:00 hours at M.R. Bangur Hospital. The medical certificate indicated blunt injuries on the complainant's face, head, hand, inner lip, and upper left arm, with no active bleeding reported. The complainant, accompanied by her colleague, one Sayantan Chatterjee, arrived at Lake Police Station at approximately 16:15 hours, where she submitted both the medical certificate and her report. Significantly, the medical report does not document any allegations of rape made by the complainant to the attending medical officer.

15. As part of the investigation, the accused was arrested on 15th July, 2024 to prevent the recurrence of similar incidents. The accused was presented before the Learned Chief Judicial Magistrate, Alipore, on 16th July, 2024, where a procedural irregularity occurred leading to the granting of bail to the accused herein respondent no. 9. The checklist, which should have been meticulously completed, was not properly filled out due to haste, prompting the Investigating Officer to apologize to the court. Following the precedent set in ***Arnesh Kumar v. State of Bihar*** reported in **(2014) 8 SCC 273**, the court directed that the Commissioner of Police, Kolkata, be informed of the irregularity, which resulted in the Deputy Commissioner of Police, South East Division, issuing a formal censure to the Investigating Officer, in compliance with the court's instructions.

16. Moreover, on 19th July, 2024, the case was amended to include additional charges under Sections 62 and 64 of the Bhartiya Naya Sanhita, 2023, based on the victim's statement recorded under Section 183 of the BNSS, 2023, before the Learned Judicial Magistrate, 10th Court, Alipore, following which a prayer for the cancellation of the bail of respondent no.9 was submitted before the Learned Chief Judicial Magistrate, Alipore.

17. Mr. Banerjee, learned Senior Standing Counsel appearing for the State further places an order dated 10th September, 2024 being order no.3 passed by the learned Sessions Judge, Alipore, South 24-Parganas informing this Court that the accused has been granted anticipatory bail by the learned Sessions Judge, Alipore, South 24-Parganas. It is submitted that although the application for anticipatory bail was filed and an order of anticipatory bail was passed on 10th September 2024, no direction was issued by the Sessions Judge, Alipore, South 24-Parganas to serve copies of the application, even after the inclusion of these more serious charges under Sections 62 and 64 of the BNS, 2023 and having perused the case diary in the instant case.

18. The Learned Counsel appearing for the petitioner thereafter submitted that as held in **Jagjeet Singh and Others v. Ashish Mishra Alias Monu and Another's** reported in **(2022) 9 SCC 321** that:

*“15. Until recently, criminal law had been viewed on a dimensional plane wherein the courts were required to adjudicate between the accused and the State. The "victim"-the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. However, with the recognition that the ethos of criminal justice dispensation to prevent and punish "crime" had surreptitiously turned its back on the "victim", the jurisprudence with respect to the rights of victims is **to be heard and to participate in criminal proceedings** began to positively evolve.”*

“22. It cannot be gainsaid that the rights of a victim under the amended Cr.P.C are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. The literal translation from the Latin approximates to "meaningless thunderbolt or lightning", and is used to convey the idea of an "empty threat" or something which is ineffective.]. We reiterate that these rights are totally

independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of "State" in the proceedings, therefore, does not tantamount to according a hearing to a "victim" of the crime."

19. Consequently, the Learned Counsel for the petitioner asserts that the petitioner has the right to be apprised of all developments in the case, including the grant of anticipatory bail. Despite this, the petitioner was neither informed of the anticipatory bail granted by the learned Sessions Judge, Alipore, South 24-Parganas, nor afforded an adequate opportunity to be heard during the bail proceedings. It is crucial to highlight that even Section 483(2) of the BNSS, 2023 mandates that the informant be notified, a provision which the respondent authorities failed to adhere to.

“483. (1) *A High Court or Court of Session may direct, —*

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 482, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice:

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under section 64 or section 70 of the Bharatiya Nyaya Sanhita, 2023, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

(1A) *The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under section 64 or section 66 or section 70 of the Bhartiya Nyaya Sanhita, 2023.*

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

20. Furthermore, it is submitted by Mr. Banerjee, Learned Senior Standing Counsel appearing for the State, in response to the learned counsel for the petitioner’s argument concerning the lack of information regarding anticipatory bail, that a clear distinction exists between Section 482 and Section 483(2) of the Bhartiya Naya Sanhita, 2023. Section 483(2) specifically pertains to the provision of information regarding bail and not anticipatory bail. Thus, the respondent authorities were under no obligation to inform the petitioners about the anticipatory bail proceedings.

21. Heard the Learned Counsel for the parties at length.

22. On perusal of the documents brought before this Court and considering the submission made on behalf of the parties, it is observed that despite the petitioner’s serious allegations of sexual assault on 14th and 15th July 2024, the police officers involved in the case diluted the charges by registering less severe sections of the Bharatiya Nyaya Sanhita (BNS), 2023. Instead of invoking Sections 62 and 64, which pertain to graver offenses, the officers registered the case under Sections 74, 75, 76, 79, 115, and 351 of the BNS, 2023. This dilution of charges was a result of tampering with the petitioner’s written complaint by Respondents No. 6, 7 and 8, and lady A.S.I. Sujata Barman police, personnel attached to Lake Police Station. The failure to initially invoke the correct sections and the subsequent tampering with the complaint reflects severe lapses in the police's handling of the matter, raising concerns about the integrity of the investigation.

23. The petitioner, after filing an FIR on 15th July 2024, was coerced and intimidated at the police station by family members of the accused, Respondent No. 9, who were brought in by police officers. Despite the gravity of these actions, no investigation was conducted into the CCTV footage of the

Lake Police Station during the time of the intimidation or any medical examination was conducted despite the petitioner's explicit request. Moreover, Respondent No. 9 was granted bail on 16th July 2024, based on a "nil" checklist submitted by the investigating officer. This checklist lacked substantive material or reasoning, indicating procedural negligence in ensuring proper judicial scrutiny of the bail application.

24. The petitioner gave a detailed statement before the Magistrate on 19th July 2024 under Section 183 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, recounting the sexual assault in specific terms, which included the disrobing and forceful act by Respondent No. 9. In the statement made under Section 183 of BNSS, 2023 she had categorically mentioned harassment meted out to her by L.S.I. Kalpana Roy, while recording her statement under Section 180 of BNSS, 2023. Following this, additional charges under Sections 62 and 64 of the BNS were added. Despite these serious accusations made at the time of complaint under Section 173 on 15th July, 2024, the investigation was marred by procedural failures, such as a male officer was deputed as an investigation officer, who subsequently tampered with the original complaint with the aid of an on duty lady officer namely, Sujata Barman of Lake Police Station and failure to seize CCTV footage of Lake Police Station where the officers and family members of the accuses coerced the petitioner to withdraw the complaint.

25. The bail application of an accused for the offence punishable under Section 64 of the BNS, 2023 cannot be heard and disposed of without giving opportunity of being heard to the informant/victim, the court and the prosecution are required to take into consideration the obligation on their part to keep the informant/victim informed about the stages of criminal proceedings including filing of applications seeking bail by the accused persons. Failure on the part of the court or the prosecution to take necessary

steps in this regard will eventually cause hardship to the accused and thereby the petitioner's right to life and liberty gets affected. While carrying the case diary to the Court for hearing of the case for anticipatory bail, the Lady S.I. Arpita Bhattacharyya of Karaya Police Station *i.e.* the investigation officer never bothered to inform the victim of the application for anticipatory bail being moved by the accused.

26. In light of these lapses, this Court is of the view that the matter is indeed extraordinary in nature and calls for extraordinary measures. The petitioner is clearly a victim of continuous torture and oppression. The investigation officer never bothered to inform the victim of the application being moved by the accused, further exacerbating the victim's distress. Moreover, the officers failed to seize the CCTV footage of Lake Police Station, where both the officers and family members of the accused coerced the petitioner to withdraw the complaint. The charges under Sections 62 and 64 of the BNS, 2023 were not considered by the Sessions Judge, Alipore. Therefore, the respondent no.9 cannot be allowed to enjoy any liberty, as the accused continues to pose a threat to the petitioner. The bail granted to the respondent no.9 by the Additional Chief Judicial Magistrate in Lake Police Case No. 133 of 2024 on 16th July, 2024, as well as the anticipatory bail granted by the learned Sessions Judge, Alipore, South 24-Parganas dated 10th September, 2024, is hereby cancelled by this Court in exercise of power conferred under Article 226 of the Constitution of India, and the police authorities are to take necessary steps in this regard.

27. This Court holds the power under Article 226 of the Constitution to issue writs or orders to any person or authority for enforcement of any right conferred by Part III of the Constitution. Moreover, as held in **Dhirendra Kumar Banerjee Vs. State of Bihar, 2005 CrLJ 4791 (Jhar)** that when the High Courts are satisfied, either that an order passed under the code would be

rendered ineffective or that the process of any Court would be abused or that the ends of justice would not be secured then the High Courts can and must exercise its inherent powers under Section 482 of the Code (now Section 528 of the BNSS, 2023) and Article 226 of the Constitution.

28. In view of the above and in the interest of justice, this Court passes the following directions:

- a) This case is to be transferred to the Deputy Commissioner of Women Police, Lalbazar herein the respondent No. 4 who will act as the investigation officer hereafter. The present investigation officer will hand over all documents and case diary to the respondent No. 4 within three (03) days from date.
- b) The bail granted to the respondent no.9 by the Additional Chief Judicial Magistrate in Lake Police Case No. 133 of 2024 on 16th July, 2024, as well as the anticipatory bail granted by the learned Sessions Judge, Alipore, South 24-Parganas dated 10th September, 2024, is hereby cancelled by this Court in exercise of power conferred under Article 226 of the Constitution of India, and the police authorities are to take necessary steps in this regard.
- c) Commissioner of Police, Kolkata, respondent No. 3, is to take disciplinary action against respondent Nos. 6, 7 and 8 and other lady officers namely (i) Lady A.S.I. Sujata Barman of Lake Police Station, (ii) Lady S.I. Kalpana Roy of Tiljala Police Station and (iii) Lady S.I. Arpita Bhattacharyya of Karaya Police Station for their failure to follow procedural norms and for tampering with the complaint by necessary authorities emphasizing the importance of strict adherence to the legal provisions designed to protect victims of sexual crimes, particularly concerning the recording of statements and the handling of complaints.

d) The Registry of Calcutta High Court shall forward a copy of the judgment to the District Judge, South 24-Parganas, Alipore to take necessary steps.

29. With the above directions, the writ petition being WPA 18752 of 2024 is disposed of.

30. All parties shall act on the server copy of this order duly obtained from the official website of this Court.

(RAJARSHI BHARADWAJ, J)

Kolkata
27.09.2024
PA (BS)