



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

ON THE 17th OF SEPTEMBER, 2024

MISCELLANEOUS CRIMINAL CASE No. 37350 of 2024

JAGDISH PRASAD DIXIT

Versus

STATE OF MADHYA PRADESH

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Appearance:

Shri Manish Datt – Senior Advocate with Shri Mayank Sharma – Advocate for the applicant.

Shri Anubhav Jain – Public Prosecutor for the respondent/State.

Shri Prakhar Naveriya – Advocate for the complainant.

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ORDER

Case diary is available.

2. This first application under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023/ under Section 438 of Cr.P.C. has been filed for grant of anticipatory bail.

3. Applicant apprehends his arrest in connection with Crime No.256/2019 registered at Police Station Niwari, District Niwari for offence under Sections 376-D, 294, 506, 34 of IPC.

4. It is submitted by counsel for the applicant that immediately after the FIR was lodged, applicant made a complaint to the senior Police Officers which was duly considered by the Police Officers. Applicant was all the time available with the Investigating Agency and had cooperated with them. Even the blood sample was given by the



applicant for conducting DNA test. The offence was registered in the year 2019 and 5 long years have passed. It is further submitted that Police after completing the investigation had filed the closure report alleging that the applicant and co-accused have been falsely implicated. Although the closure report was not accepted but the Trial Court directed for filing of charge-sheet which was challenged by the applicant by filing M.Cr.C. No.45536/2023 and this Court by order dated 26/04/2024 set aside the order dated 30/08/2022 passed by CJM Tikamgarh and directed the CJM to proceed in accordance with law laid down by Supreme Court in the case of **Abhinandan Jha and others Vs. Dinesh Mishra** reported in **AIR 1968 SC 117**. It is further submitted that even the complainant had filed W.P. No.21155/2019 for arrest of the applicant which was dismissed by Co-ordinate Bench of this Court with liberty to the complainant to raise an objection in case if the closure report is filed. It is submitted that in fact applicant has been falsely implicated at the behest of third person with whom he has enmity.

5. *Per contra*, application is vehemently opposed by counsel for the State. It is submitted that after the order dated 30/08/2022 passed by CJM Tikamgarh was set aside by this Court by order dated 26/04/2024 passed in M.Cr.C. No.45536/2023, the Court below again considered the closure report and ultimately rejected the closure report and took cognizance of the matter. The said order was challenged by applicant by filing M.Cr.C. No.25903/2024 which was dismissed by this Court by order dated 30/07/2024 by assigning the reasons elaborately. Co-accused Chandrakant Yadav has been arrested. Applicant is avoiding his



arrest. On 10/09/2024, Police got information that the applicant has taken shelter in the house of one Tinku Gupta and accordingly, when the Police went to his house, it was found that door was locked from inside. In spite of repeated knocking, nobody opened the door and therefore police authorities went to police outpost Ranipur and came back along with additional Police staff. On 11/09/2024, Rambharose, employee of Tinku Gupta informed that he had left the applicant at Railway Station Harpalpur and he also told that the applicant has informed that the applicant is going to Chitrakoot. Thus, it is clear that the applicant is trying to avoid his arrest. Even proceedings under Sections 82, 83 of Cr.P.C. have been initiated and information has been collected with regard to the property of the applicant. It is further submitted that it is true that the police had filed the closure report, but once the said closure report was rejected by the Court below, which has been affirmed by this Court, then the applicant cannot take advantage of the opinion formed by the police authority in the form of closure report.

6. Heard learned counsel for the parties.

7. It is true that FIR was lodged in the year 2019. However, it is really surprising that although the applicant and another co-accused Chandrakant Yadav were in constant touch with the police authorities, but the police authorities instead of taking coercive measures against them, were investigating the matter as per the convenience of the applicant.

8. The Supreme Court in the case of **Romila Thapar and others Vs. Union of India and others** reported in (2018) 10 SCC 753 has held that the accused has no say in the matter of investigation. In spite of



that, Police was out and out to support the applicant. Even the blood samples of the applicant were collected and as per the DNA test report, very low un-interpretable Y- chromosomes were found.

9. This Court is constantly observing that in various cases, very low un-interpretable Y-chromosomes are being found. Why this is happening is a mystery? Whether the lab is not equipped with approved DNA test kit or the scientific officers are deliberately avoiding conducting the DNA test properly, is a matter which is to be considered by Director General of Police, State of Madhya Pradesh but one thing is clear that in multiple cases very low un-interpretable Y- chromosomes is being reported.

10. Furthermore, in the case of **Hariom @ Chhotu Raikwar (Kevat) Vs. State of M.P. in M.Cr.C. No.45232/2021 (Gwalior Bench)**, Director General of Police, State of Madhya Pradesh had filed his affidavit that on physical verification, contaminated kits were found and even certain e-mails were collected to show that one officer posted in DNA lab in Sagar was in constant touch with the Chinese company for supply of DNA kit whereas DNA kit was to be procured by the Police Headquarters.

11. Accordingly, this Court by order dated 07/02/2022 passed in the case of **Hariom (supra)** had observed as under:-

“A detailed affidavit of Director General of Police, State of MP, Bhopal has been placed on record, which disclosed shocking facts regarding rampant corruption going on in FSL, Sagar. This affidavit is based on the enquiry report submitted by the Additional Director General of Police, PTRI, Police Headquarters, Bhopal. The relevant part of the affidavit reads as under:-



“(6) That, the inquiry has thus disclosed that during said period of March, 2021 to September, 2021, when the DNA Lab was facing shortage of DNA Kits and consumables, Shri Pankaj Shrivastava was interested in research work on personal basis for providing undue favour to the foreign companies and this caused undue delay in Government work. Shri G Janardan, ADG of Police has also concluded that Smt Harsha Singh, the then Director, SFSL, Sagar was failed in proper supervision of functioning of DNA unit and overlook the personal assignments of Shri Pankaj Shrivastava. The inquiry report also recommends rigorous departmental action for major penalty against Shri Pankaj Shrivastava and Smt Harsha Singh under relevant provisions of Madhya Pradesh Civil Service Conduct Rules, 1965.

(7) That, the inquiry report has disclosed that the act of sharing of requirement of the DNA Lab to private companies for undue gain by Shri Pankaj Shrivastava amount to criminal misconduct and punishable under section 7(a)(b) of Prevention of Corruption Act, 1988 (Amended in 2018). Further, action will be ensured as per applicable rules in this regard.

(8) That, on the basis of first inquiry report dated 08.01.2022 submitted by Shri G Janardan, ADG of Police, PTRI, Bhopal a proposal for departmental action against Smt



Harsha Singh, the then Director, FSL, Sagar and Shri Pankaj Shrivastava, the then Head of the DNA, Unit, SFSL, Sagar has already been sent to the State Government and in response to the same letter dated 31.01.2022 has been issued from the Home Department, Mantralaya Bhopal for issuance of charge sheet in the name of said delinquent officials. A copy of said letter dated 31.01.2022 is enclosed herewith on Annexure-A/2.”

The enquiry report submitted by the Director General of Police, discloses that Shri Pankaj Shrivastava the Incharge DNA, FSL, Sagar, had unauthorisedly entered into an agreement with the Company based at China and Shri Pankaj Shrivastava did not cooperate with the Investigating Officer and refused to open the emails in the computer of the Inquiry Officer and, accordingly, some e-mails were forwarded and it has also been mentioned that Shri Pankaj Shrivastava, Incharge of DNA, FSL, Sagar has not shared the complete information about his e-mail communication with regard to unauthorised procurement of kits, which gives rise a serious doubt about his integrity. Furthermore, from e-mail dated 06.09.2021 which has been quoted by the Inquiry Officer, it appears that Shri Pankaj Shrivastava had wrote to a foreign company that:-

“Then you may quote for 50,000 reactions to be procured for my lab. Plz connect with Mr. Chandrakant who helped me in clearance.

(Remote controlling the tender)”.

In reply it was answered by Mr. Ti HE, China as under:-

“But we can compensate by some other ways to make sure the price is



same as above until you bought 50,000 reactions for kit.

I can sell these kit based on this price to Mr. Chandrakant's company firstly, and then they can sell kits to your Laboratory at a higher appropriate price to make some profits.”

Accordingly, the Inquiry Officer has given the following remarks:-

“Taking advantage of being subject expert and possible member in procurement committee, he is sharing vital information well ahead of the tender. Act unbecoming of a public servant.”

From the reply given by Mr. Ti HE, China, it is clear that he had offered undue financial benefits to Shri Pankaj Shrivastava and, accordingly, the Director General of Police in paragraph 7 of his affidavit has specifically stated that the conduct of Shri Pankaj Shrivastava amounts to criminal misconduct and punishable under Section 7(a)(b) of the Prevention of Corruption Act, as amended 2018 and further action will be ensured as per rules applicable in this regard.

The Inquiry Officer has also come to a conclusion that Shri Pankaj Shrivastava was sharing inside information with the vendor and in spite of shortage of kits, he was illegally involved in his personal research work. Furthermore, from e-mail dated 24.06.2021 sent by Shri Pankaj Shrivastava, it is clear that in reply to Mr. Ti. HE, China, by which he had mentioned that Shri Pankaj Shrivastava can make some profit, it was stated by Shri Pankaj Shrivastava that:-

“I cannot commit as contract because then I would be needing it to put up formally to my Director which may be formally sent to State Govt. which may



be formally sent to State Govt. for formal permission. This whole process may take months if I initiate. The work is scientific and due to my research interest and interest of the Govt. thinking that one more kit will increase competition and will be available in India. I am ready to take up this. I did this for Promega, Thermo (verfler plus), sure ID (Panglobal, 23 Comp and recently Y35), recently Sorensan forensics. So, I cannot get the formal contract signed from my Director.I will use all other consumables from my own expense as I do not use Govt. resources for my research.”

The various e-mails sent by Shri Pankaj Shrivastava indicate a lot. However, the affidavit of Director General of Police is silent as to whether the FIR was lodged or not ? The affidavit is also silent about the involvement of Smt. Harsha Singh, Director, RFSL, Sagar in the entire communication as some kits were unauthorisedly purchased which should not have escaped from the notice of Smt. Harsha Singh.”

12. Be that whatever it may be.
13. It is for the DGP to correct his house, therefore, attention of DGP is being invited to the fact that in multiple cases very low un-interpretable Y-chromosomes are being reported and that situation should be cured. But, one thing is clear that although the applicant was available with the police, but the police was showing undue favour to the applicant.
14. It is really shocking that on one hand rape on a girl is not only a heinous offence, but it is also an attack on the emotions as well as self-



respect / pride of prosecutrix and at the same time, police was out and out to support the accused persons. Time has come when the police must show its seriousness as well as concern about the safety of girls. Why a girl would put her pride at stake only because of the fact that the applicant has some enmity with third person?

15. Furthermore, it is clear that the applicant is avoiding arrest and when the police reached to the place where he was hiding himself, doors were not opened and ultimately he escaped from the said place in the night itself.

16. Considering the totality of the facts and circumstances of the case, when this Court has already considered the conduct of Police in investigating the matter and has found that the closure report which was filed by the police was not worth acceptance, coupled with the fact that in spite of the fact that the applicant was available with the police, still police did not take any coercive action and was all the time dancing to the tune of the applicant contrary to the law laid down by Supreme Court that investigation as per the dictation of accused cannot be done, this Court is of considered opinion that no case is made out warranting interference because possibility of pressurizing the witnesses cannot be ruled out.

17. Accordingly, application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

S.M.