

ITEM NO.50

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Criminal) No(s). 132/2016

ASHA RANJAN

Petitioner(s)

VERSUS

STATE OF BIHAR AND ORS.

Respondent(s)

(with office report)

Date : 17/10/2016 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. Ankur Gogia, Adv.
Ms. Manju Jetley, AOR

For Respondent(s) Ms. Pinky Anand, ASG
Mr. P.K. Dey, Adv.
Mr. Shamik Sanjanwala, Adv.
Mr. T.N. Razdan, Adv.
Mr. Ansh Singh Luthra, Adv.
Mr. M.K. Maroria, AOR

Mr. Gopal Singh, AOR
Mr. Manish Kumar, Adv.

Mr. Surendra Singh, Sr. Adv.
Mr. D.S. parmar, Adv.
Mr. Susheel Tomar, Adv.
Ms. Abha R. Sharma, AOR

Mr. M. Shoeb Alam, AOR
Ms. Fauzia Shakil, Adv.
Mr. Ujjwal Singh, Adv.
Mr. Mojahid Karim Khan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This Court on 23.09.2016, while entertaining the petition under Article 32 of the Constitution of India, recorded as follows:-

"It is further submitted by Mr. Panday that if

the investigation and trial takes place in the Siwan District in the State of Bihar, the respondent nos. 3 and 4 and the other accused persons will terrorise the witnesses as a consequence of which the petitioner would not get any justice and remain a constant victim searching for solace. On a perusal of the petition, it is *prima facie* discernible that the petitioner who lives with two small children, after losing her husband and the developments that have taken place in the District Siwan, is in a state of continuous fear. It has been said that courage is the mother of all virtues and a man with courage can always sustain his or her dignity. But, sometimes, situations are created by certain powerful protagonists which instill fear in the mind of a citizen and that fear has the potentiality to usher in atrophy to the sense of dignity. It is also asserted in the petition that in the obtaining fact situation, this Court may direct for giving her protection by the competent authority failing which it is difficult to fathom, what kind of danger shall visit her.

Issue notice returnable within two weeks. A copy of the petition be served on Mr. Gopal Singh, learned standing counsel for the State of Bihar who shall obtain instructions from respondent nos.1 and 2. As far as respondents 3 and 4 are concerned, Mr. Gopal Singh shall instruct the respondent no.1, the Home Secretary of the State of Bihar to see to it that the respondent nos.3 and 4 are served dasti. As far as respondent no.2 is concerned, a copy be served on Mr. Gopal Singh, apart from dasti.

As far as the CBI is concerned, let a copy of the petition be served on Mr. P.K. Dey, learned counsel, who ordinarily appears for CBI so that he can take instructions.

In course of hearing, Mr. Pandaya submitted that the CBI has not commenced the investigation. In view of that, we direct that the CBI may proceed with the investigation but not finalize it and shall file the status report before this Court on 17.10.2016.

The Superintendent of Police, Siwan District shall provide police protection to the petitioner and her family. The concerned Station House Officer of Nagar Thana shall also see that the protection is given. We have directed both the

Superintendent of Police and the Station House Officer so that the petitioner, a lady in distress, shall feel protected."

Be it noted, on that day, a statement was made by Mr. Kisley Pandey, learned counsel appearing for the petitioner that Mohammad Kaif had surrendered to custody on 21.09.2016 and the other accused Mohammad Javed was still absconding. An affidavit has been filed by the State of Bihar contending, *inter alia*, that the charge sheet has been filed against six accused persons including both the abovenamed persons on 20.08.2016.

As per our earlier order, a status report by the Central Bureau of Investigation (CBI) has been filed. The relevant part of the report reads as under :-

- "5. That immediately after registration of the Case by CBI, a team headed by SP, CBI along with Chief IO, Assistant IO and other support staff reached Siwan on 16.09.2016 and has been comping there for the purposes of expeditious Investigation.
6. That the CBI team inspected the scene of crime and other relevant places in attendance of the IOs of the local police and also discussed the details of the case and collected relevant information.
7. That the CBI team collected the case files / records from local police. Scrutiny of the records revealed that Siwan Police had filed charge sheet against six accused persons namely Azaharuddin Beig @ Laddan Miyan, Rohit Kumr Soni, Vijay Kumar Gupta, Rajesh Kumar, Sonu Kumar Gupta and Rishu Kumar Jaiswal in the court of CJM, Siwan on 20.08.2016. However, they had kept open further investigation in the matter.
8. That scrutiny of the local police records also revealed that the suspect Sonu Kumar Soni, Mohammad Kaif @ Bunty, Javed and Jimmy were absconding after the registration of case by local police.
9. That the CBI after collecting the records

had taken following steps:-

- (i) The local police records which were illegible were typed clearly.
- (ii) The exhibits including arms and ammunition, clothes of the deceased, mobile instruments of the accused persons and deceased were collected. The mobile instruments were sent to the expert for retrieving the data including deleted data.
- (iii) CFSL team from New Delhi were called and scene of crime was recreated with the help of local police IOs and the persons who had seen the body and the place of occurrence.
- (iv) Interaction with the Doctors who had conducted Postmortem of the deceased was made in presence of CFSL expert.
- (v) Call details of the accused, suspect, deceased and other relevant person were collected which are under scrutiny.
- (vi) The hard disk of computer being used by the deceased was collected and sent to the expert to find any relevant material to the case.
- (vii) Around 40 witnesses were examined which included the complaint and his family members, IOs associated with the case, Doctors who conducted post mortem, Persons connected with print media and others to know the details and motive for killing the deceased.
- (viii) So far two suspect / accused Sonu Kumar Soni and Mohammad Kaif @ Bunty were taken on police remand and interrogated in depth.
- (ix) The accused Azaharuddin Beig @ Laddan Miyan was examined in Judicial Custody in Central Jail Gaya.
- (x) The suspect Javed has surrendered in other case and will soon be examined in the instant case."

On being asked, for what offences, the charge sheet has been filed, learned counsel for the State could not mention the same. However, Ms. Pinky Anand, learned Additional Solicitor General and Mr. P.K. Dey, learned counsel appearing for the CBI, after obtaining instructions from Mr. S.S. Kishore, S.P., CBI, stated that charge sheet has been filed under Sections 302/34 and 120B of the Indian Penal Code and for the offences under Sections 25 and 27 of the Arms Act. As already stated, we have directed investigation by the CBI and, therefore, the CBI is investigating and the CBI investigation shall continue.

The issue that we have posed on the earlier occasion whether the two accused persons, namely, Mohammad Kaif and Mohammad Javed who have criminal antecedents and were declared as proclaimed offenders were seen in the company of Respondent No.3 and Respondent No.4, namely, Shahabuddin, Vice President, Rashtriya Janta Dal and Tej Pratap Yadav, Health Minister, Government of Bihar, could have been allowed to do so. It is submitted by Mr. Surendra Singh, learned senior counsel appearing for respondent No.4 and Mr. Shoeb Alam, learned counsel appearing for respondent No.3 that there were chance meetings and, in any case, the accused are not proclaimed offenders. Mr. Gopal Singh, learned counsel appearing for the State of Bihar would contend that they are not proclaimed offenders on the date they were seen in the company of respondent Nos.3 and 4 giving bouquets.

Having regard to the entire scenario, we are inclined to issue three directions at present :-

1. The learned Sessions Judge, Siwan (Town), Bihar, shall submit a report along with the order sheet with regard to the status of Mohammad Kaif and Mohammad Javed as regards they are proclaimed offenders or whether there was issue of non-bailable warrants of arrest from the court or any other aspect relating to the case concerned.

2. The CBI shall complete the investigation within three months hence.
3. As the charge sheet has already been filed by the State Police and further investigation is in progress by the CBI, the accused persons who have been charge sheeted shall not claim any benefit for enlargement on bail under proviso to Section 167(2) of the Code of Criminal procedure.

Let the matter be listed on 28.11.2016 by which date the learned Sessions Judge shall submit the report. The CBI shall also file its further status report by that day.

Parties are at liberty to file additional affidavits.

Call on the date fixed.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master