
(2003) 04 MP CK 0065
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5556 of 2002

Ku. Rajni Khare

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Constitution of India, 1950 — Article 21, 22(2)

Criminal Procedure Code, 1973 (CrPC) — Section 109, 110, 41, 41(1), 41(2)

Citation : (2003) 3 MPHT 182

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : R.L. Gupta and S.K. Garg, for the Appellant; R.S. Jha, Dy. A.G. and B.N. Mishra, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.—Petitioner, a young girl of 18 years, has come to this Court. According to police she was victim of rape u/s 376, IPC and two of the accused persons committed rape, she came out of a house, intercepted by Rickshawala, then police squad party also reached the spot, took the young girl Rajni Khare to the police station, report was reduced in writing, then the sad story commences.

2. I refrain from discussing the facts and merits of the case so far as commission of offence of rape is concerned. There is allegation by petitioner that case is false. Counter allegation that case is correct. This Court confines the scope of the writ petition to detention part of petitioner and refrain to comment on the investigation u/s 376, IPC as challan has already been filed before the Competent Court and sessions trial is pending before the learned Addl. Sessions Judge. Facts as regards to commission of offence of rape and whether petitioner has been victimized by the rapist is to be seen by the Criminal Court concerned.

3. This Court is stressed to note the conduct and behaviour of the police which it has meted out to the prosecutrix in the instant case. It is submitted by the respondents that protective umbrella was provided by the police to keep her in

custody and she was sent as per her desire from police station to a place after lodging the report to Chhattisgarh. Later on again after filing of the writ petition, petitioner was arrested, put into custody u/s 109, Cr.PC for which police constable has been punished with with-holding of one increment. However, petitioner was kept in custody for four days. The story is sad, startling and shocks the conscience, how young girl of 18 years could be taken into custody, at the one hand it is stated that she was victimized by rapist. The other side of the story unfolds she was equally victimized by the police too.

4. Petitioner submits that on 8-9-2002 she was taken to the police station by the Station Officer Incharge/respondent No. 4, Police Constable Shri Raju Bisen along with another constable in a Jeep from her house. Thereafter facts are narrated that report of the offence u/s 376, IPC was recorded, petitioner was required to sign on the documents. I leave that part for decision to the Competent Criminal Court.

5. The further averment in petition is that from 8-9-2002 to 12-9-2002, petitioner was kept in custody by the police. Father of petitioner Shri Shambhoo Khare preferred an application before CJM, Balaghat u/s 57, Cr.PC on 11th September, 2002 mentioning the fact that his daughter was kept in police custody for the last three days, police was not releasing her and was not informing in what offence she was detained in the police station. Police has not produced Ku. Rajni Khare in the Court also. Hence police be directed to produce his daughter before the Court. CJM called the report from the concerned police station on 12-9-2002. She was not produced before the Court nor the case diary of the offence u/s 376, IPC was submitted. However, a report (P-2) was submitted by the police station officer before the CJM, Balaghat for not producing the case diary and the petitioner before the Court. It was submitted that case diary of the offence of rape was submitted on 12-9-2002 before the Session Judge, what was required u/s 57 not the case diary of the offence u/s 376, IPC, but production of Ku. Rajni Khare was necessary. The order sheet (P- 3) of CJM in proceeding u/s 57, Cr.PC shows that application was presented by petitioner's father on 11-9-2002, the CJM has mentioned that police station officer in-charge has not submitted any report though report was called. The Court fixed 13-9-2002, police protection was also sought by the petitioner's father. An explanation was called of the police station officer incharge on 13-9-2002. Explanation (P-4) was submitted before the CJM, Balaghat. The explanation submitted indicates that Ku. Rajni Khare prosecutrix was subjected to rape, she was kept in custody for "protection". Spot was investigated. Ku. Rajni Khare submitted an application that her father was a beggar and she was not ready to go to her father's house and she could be pressurized. It was mentioned that prosecutrix is a complainant in the case, she was not kept in custody as an accused, she stated that she was not ready to live with her father as such as requested by her it was "considered proper to send her to Badi Maa Rajia Bai". The "prosecutrix was not produced before the Court", it was stated that she was not at the police station, but was "sent" to Badi maa Rajia Bai as it was her

desire and she was not ready to go to Shri Shambhoolal her father, the order sheet of the CJM Court dated "13-9-2002" indicates that it was stated before the Court that she was sent by the police to the Champa District in State of Chhattisgarh. The report (P-4) submitted is to the following effect :--

dk;kZy;] Fkkuk izHkkjh] Fkkuk dksrokyh] ckyk?kkV

?ekad % fnukad %

izfr]

Jheku eq[; U;kf;d n.Mkf/kdkjh egksn;] U;k;ky;] ckyk?kkVA

fo"k; % "kEHkw firk ft;kyky [kjs tkfr x<+soky }kjk fn;s x;s vkosnu i= ds lEcU/k esaA

ekU;oj]

lfou; fuosnu gS fd Fkkuk esa jtuh x<+soky us fjiksVZ fd;k fd lquhy tqustk o ewaNokys egkjkt dk NksVk okyk yM+dk us fuoZL= cykRdkj dj guqeku pkSjkgs ij NksM+ fn;k Fkka ukjh dh yTtk dks /;ku esa ugha j[kkA vkosfndk "kEHkwyky dks cqykj lqj{kkFkZ j[kok;k Fkk rFkk Hk?bZ;k ds C;ku ds vk/kkj ij ?kVuk LFky dh rLnhd dh xbZ Fkh rRi"pkr ckyhdk tks mlds ifjokjtuksa ds ikl fHktok;k Fkk ckyhdk us ,d vkosnu i= izLrqr fd;k gS fd by>kaik fHk{kkjgu ?Hkh[k ekaxjk gS? ftls vPNs ls ugha j[k ikrk gSA ?kj esa Hkh jgus dh O;oLFkk ugha gS blfy, esjs lqj{kk dh dksbZ O;oLFkk ugha gSA mls rjg rjg ds izyksHkj nsdj dHkh Hkh cnyok;k tk ldrk gSA

vkosfndk bl dsl esa eqnbZ gSA eqnbZ dks vkjksi tSlk O;ogkj ugha fd;k tk ldrk gSA uk gh mls canh ds :i esa j[kk tk ldrk gSA vkosfndk jks jks dj vius firk ds ckjs esa dgh gS fd eSa firk ds ikl ugha jguk pkgrh gS D;ksafd esjk firk nk: ihdj ekjihV djrk gS vkSj rks ykx mldks nk: fiyk nsrs gS vkSj iSlS ns nsrs gSA mUgha ds i{k esa gks tkrk gSA vkSj eq>s izrkf.kr djrk jgrk gSA viuh cM+h eka Jherh jft;k ckbZ ds ikl vkdj jgrh gwa tks blds vkosnu ij lqj{kr :i ls vkosfndk ds lgefr ls mldh izkFkZuk ij fopkj fd;k x;k gSA

vkosfndk orZeku le; esa Fkkuk esa ugha gSA Mk;jh e; izfr izfrosnu ds Isok esa izLrqr gSA

pwafr ckfydk jtuh "kEHkwyky x<+soky ds ikl tkus ds fy, vlger gS] blfy, vkosnd bl izdkj dk vkosnu fn;k gSA

gLrk{kj o lhy

6. The CJM Court called for explanation of police station officer incharge. An application (P-5) was submitted on 12-9-2002 for police protection by Shambhoo Lal pointing out his daughter Ku. Rajni Khare was kept in police custody for three days and police was pressurizing him as he had filed an application u/s 57, Cr.PC for production of Ku. Rajni Khare before the CJM Court. Father of petitioner also filed representations before the Superintendent of Police, Collector and SDM, Balaghat on 11-9-2002 pointing out that Ku. Rajni Khare was "unmarried" and

was "kept in police custody". She should be handed over to him and police was not releasing Ku. Rajni Khare. An affidavit was also filed in support of allegation. Complaint (P-7) was also submitted by the petitioner Ku. Rajni Khare to the Director General of Police mentioning that she was kept in "police custody from 8-9-2002 to 12-9-2002 for four days". Video recording of her statement was done and she was "sent on 12-9-2002 to Durg" in the State of Chhattisgarh under the police custody and was placed with an "unknown woman". She came with a great difficulty to "Gondia" by train "on 17-9-2002" and from "Gondia to Balaghat in a bus" on "18-9-2002", police did not allow her to go to the Court. She apprehended for her life.

7. Writ petition was preferred before this Court on 30th September, 2002 which came up for hearing on 7-10-2002; it was passed over, later it came for hearing on 9-10-2002, it was stated that "petitioner was again taken into custody" by the police in the month of October, 2002, statement was directed to be verified. On the same day in the later half of the day another order was passed by this Court considering the serious nature of allegation and also the fact that petitioner was again taken into "custody in proceeding u/s 109, Cr.PC". It was directed that she be released forthwith. Director General of Police was directed to make an enquiry into the entire episode and the allegations made by the petitioner and to submit report within fifteen days. Petitioner was directed to be produced before this Court on 11-10-2002. It was directed that she should not be harassed in any manner by the police. Petitioner was kept present before this Court in 11-10-2002, she has "expressed her desire to live with her father" and "custody was ordered to be restored to the father" and if any untowards incident happen to the petitioner, the responsibility shall be that of respondents. Matter was listed on 22-10-2002; on 22-10-2002 no report was submitted. Case was taken up on 31-10-2002. On 7-11-2002 it was stated that petitioner was being harassed and threatened to withdraw the writ petition. This Court directed that submission has to be considered when hearing takes place. On 2-12-2002, petitioner was present and stated that she was as a matter of fact, detained by the police, statement was placed on record and I.A. No. 3563/2002 for withdrawal of the petition was dismissed in view of the statement of the petitioner herself.

8. A return has been filed by respondent Nos. 1, 2 and 6. It is contended that petition is devoid of merit. On 9-9-2002 at 1.40 a.m. a report was lodged by the petitioner at Police Station, Kotwali, Balaghat to the effect that on account of heavy rains when the petitioner was standing under shelter, one Sunil Juneja and younger son of Munchhwale Maharaj (Ramesh Shukla) forcibly took her away and committed rape upon her. She somehow managed to escape under the guise of Urination and was seen by a Rickshaw puller, police patrol vehicle also arrived on the spot, the police personnels on being apprised of the incident took her to the Police Station, Kotwali where her report was registered at Crime No. 367/2002 u/s 376/34 of IPC against the two culprits. At no point of time petitioner was detained, petitioner has not filed the present petition but the accused persons have coerced her into signing certain applications without disclosing the contents.

9. It is admitted by respondents in the return that case u/s 109 of Cr.PC was registered on 7-10-2002 and petitioner was kept in "custody from 7-10-2002 to 9-10-2002". Petitioner was arrested in relation to the said offence on 6-10-2002 at 23.30 hours and was produced before the SDM on 7-10-2002, on the directions issued by this Court on 9-10-2002 enquiry has been conducted in the matter by the Inspector General of Police. He submitted a detailed report, the object of the petition is to prevent the proper investigation. Parawise reply has not been filed by the respondents to the averments made in the petition. It was not found proved that she was sent without her consent to Durg. She was kept in custody of police and in jail from 6-10-2002 to 9-10-2002. During pendency of this writ petition, statement of the petitioner was recorded u/s 164, Cr.PC before the Magistrate on 23-10-2002. This Court received an application dated 30-10-2002 sent by the petitioner by post for providing police protection as police was harassing her to withdraw the writ petition. An application was filed to withdraw the writ petition on 28-11-2002 which was dismissed in presence of the petitioner as she stated that she was actually taken in police custody. She clearly expressed her willingness to pursue with the writ petition. An application for extension of time was filed on 22nd October, 2002 for submitting the report of enquiry which was filed by respondents. An application has been filed on 29-1-2003 that not only in the case of petitioner but in four other cases which have been registered subsequently statement has been videographed. It was done in the circumstances that accused persons are politically influential persons. Be that as it may, this Court is not to comment on the investigations, but is considering only the conduct of the police meted out to the prosecutrix and her detention in the case u/s 109, Cr.PC.

10. With respect to the proceedings u/s 109, Cr.PC in which petitioner was taken in custody on 6-10-2002 at 23.45 hours from Hanuman Chowk, Balaghat, the documents filed by the petitioner's Counsel on 7-11-2002 which are the photo-copies of the certified copies indicates that petitioner was found standing in Hanuman Chowk. She used to pass comments on the passer-by. She was taken into custody for improvement of her conduct u/s 41(2) of Cr.PC read with Section 109, Cr.PC. Report of the same was sent to the SDM where the case No. 262/2002 was registered. Statements of Bhajan and Raju were submitted along with complaint filed by the police, Bhajan has mentioned that at about 11 P.M. when he was going to his house after closing his shop, he found one girl standing near Hanuman Chowk. Certain boys were talking to her, police made enquiries, she disclosed her name as Rajni Khare, police asked her to go back to her house, but she refused, hence was taken to the police station. To the same effect is the statement of Raju. However, Shri R.S. Jha, learned Dy. Advocate General along with Shri Naradram Sinha, Asstt. Sub-Inspector, Thana Kotwali, District Balaghat has also filed certain true copies of the complaint filed before SDM, the complaint bears No. 87/02/79 u/s 41(2) read with Section 109, Cr.PC. Same was submitted on 7-10-2002 at 13.45 hours and Ku. Rajni Khare aged 19 years was found to be involved in "picking pockets". Thus was arrested u/s 41(2) read with Section

109, Cr.PC. The complaint is signed by Ms. Purnima Rana, Constable No. 539. A copy of arrest memo has also been filed by Shri Jha which shows that petitioner was arrested on 7-10-2002 at 13.45 hours. The statements of Raju and Bhajan which have been produced on being required by the Court by Mr. R.S. Jha, Dy. Advocate General it is mentioned that Ku. Rajni Khare was found picking pockets and was arrested on 7-10-2002 at 13.45 hours. Typed copy of Rojnamcha Sanha is also to be found in the bunch of papers submitted. Rojnamcha Sanha bears Nos. 364, 365 shows that petitioner Ku. Rajni Khare was arrested on 7-10-2002 at 13.45 hours, it is mentioned that she was found hiding and was arrested for offence u/s 41(2) of Cr.PC.

11. When the documents produced by respondents are read juxtaposed to the documents filed by the petitioner and also the return filed by the respondents, it is clear that the documents which have been produced by Mr. R.S. Jha on being required by the Court are containing different facts than as mentioned in the documents which have been filed by the petitioner on 7-11-2002 of proceedings u/s 109, Cr.PC. The complaint number is same in both the cases, i.e., 87/02/79, offence is u/s 41(2) read with Section 109, Cr.PC in the documents of case u/s 109, Cr.PC filed by the petitioner her "arrest" is shown on "6-10-2002 at 23.45 hours" and she was arrested by the police at 23.50 hours as mentioned in arrest memo filed with the complaint as apparent from photo-copy of the certified copy. Statements of Bhajan and Raju filed by the petitioner are to the effect that she was talking to certain boys and was standing near Hanuman Chowk whereas documents produced by respondents during course of hearing some of the documents are true copies issued by the SDM Court on 1-11-2002 shows that petitioner was arrested in case u/s 109, Cr.PC on "7-10-2002 at 13.45 hours" when she was found involved in pocket picking. Statement of Raju and Bhajan are totally at variance. The complaint produced by Mr. R.S. Jha is dated 7-10-2002 is quoted below:--

bLrxklk

Fkkuk & dksrokyh ftyk & ckyk?kkV

bLr-?- 87@02@79 /kkjk 41?2?@109 tk-QkS-

uke izkFkhZ & "kklu rQsZ iqfyl Fkkuk dksr- ckyk-A

uke vkjksih & jtuh iq=h "kaHkqyky [kjs mez 19 o"kZ tkfr x<+soky lk- okMZ ua-13 <hejVksyk lkxkSu ou cw<+h ckyk?kkVA

fnukad ?kVuk le; & 7&10&2002 ds 13-45 ctsA

?kVuk LFky & guqeku pkSd] ckyk?kkV

fnukad le; lwpu & 7&10&02 ds 14-05 ctsA

uke irk xokgku & ?1? Hktu oYn vuarjke mez 50 o"kZ lk- xksaxybZ ckyk?kkVA

?2? jkt firk izseyky efyd mez 28 o"kZ lk- cSgj jksM- ckyk?kkVA

?3? e-iz-vk- iw f.kZek jk.kk] ?- 539 Fkkuk dksr- ckyk-A

fooj.k %& ekeys dk laf{kIr fooj.k bl izdkj gS fd] fnukad] ?kVuk] le; dks gejkG LVki ds VkmU Hkze.k ds nkSjku mDr vkjksfi;ka] mDr LFkku dk tsc dVh djrh gq;h feyhA ftls /kkjk 41?2? tk-QkS- ds rgr fxj- ,oa /kkjk 109 tk-QkS- dk bLrxklk rS;kj U;k;ky; izLrqR fd;k tkrk gSA

Arrest memo is quoted as below :-

fxj?rkjh iapukek

Fkkuk % dksrokyh ftyk ckyk?kkV

bLr-?- 87@02@82 /kkjk 41?2?@109 tk-QkS-

fnukad le; fxj?rkjh & 7&10&02 ds 13-45 cts

LFkku fxj?rkjh & gugeku pkSd ckyk?kkV

uke vkjksih & jtuh iq=h "akHkwyky [kjs] mez 19 o"kZ tkfr x<+soky lk- okMZ uacj 13 <+hejVksyk lkxkSu ou cw<+h ckyk?kkVA

fdlus fxj- fd;k & e-iz-vkj- iw f.kZek jk.kk] ?- 539 Fkkuk dksrokyh ckyk?kkV

uke irk xokgku & ?1? Hktu oYn vuarjke mez 50 o"kZ lk- xksaxybZ] ckyk?kkV

?2?jktw firk izseyky efyd mez 28 o"kZ lk- cSgj pkSdh ckyk?kkVA

fooj.k %& mijksDr vkjksfi;ka Inj dks lafnX/k voLFkk esa ik;s tkus ls dksbZ laKS; vij/k vfVr u gks djds /kkjk 41?2?@109 tk-QkS- ds rgr fxj?rkj fd;k x;kA

gLrk{kj xokg

?1? n- Hktuyky gLrk- vkjksih gLrk- vf/kdkjh

?2? jktw jtuh e-iz- vkj- iw f.kZek jk.kk] ?-529

Statements of Raju and Bhajan produced by respondents are also quoted below :-

dFku

jktw firk izseyky efyd] mez 28 o"kZ] lk- cSgj jksM+] ckyk?kkV

eSa m? irs ij jgrk gwaA Lohij dk;Z djrk gwaA fnukad 7&10&2002 ds 13-45 cts djhcu eSa gugeku pkSd ls ?kj dh vksj tk jgk Fkk fd ogka ij iqfyl us ,d yM+dh dks idM+h gq;h Fkh tks tsc dVh Fkh ftls ysdj iqfyl esjs le{k Fkkuk ysdj vk;h rkfd "kkafr Hkax u gksA

e-iz- vkj- iw f.kZek jk.kk] ?- 529 7&10&2002

dFku

Hktu cYn vuarjke mez 50 o"kZ] lk- xksaxybZ] ckyk?kkVA

eSa m? irs ij jgrk gwaA pk; dh nqdku ij dke djrk gwaA fnukad 7&10&2002 ds djhc 13-45 cts eSa nqdku ls ?kj tkus ds fy, fudyk rks jkLrs esa gugeku pkSd ds

ikl ,d yM+dh dks iqfyl us tsc dkVrs gq, idM+k Fkk mldh dkQh HkhM+ FkhA ckn esa iqfyl mls rRdky "kkafr Hkax u gks dj esjs le{k fxj?rkj dj Fkkuk ys x;hA

e-iz- vkj- iwf.kZek jk.kk ?ekad 539 7&10&2002

Rojnamcha Sanha which has also been filed by respondents relevant entry is quoted below :-

udy jkstukepk lUgk ?- 364] 365 fn- 7&10&2002

Fkkuk dksrokyh] ckyk?kkV

?- fdLe fjiksVZ le; 1 2 3 4 5 6 7 8 9 10 11

364 dk;eh bLr- 7&10&02 Vkmu 364 bLr- guqeku "kklu dq- jtuh 1 7&10 lafnX/ k ?- 87@02 87@02@ pkSd] rQsa iq=h iz-vkj- 02 ds gkyr esa /kkj 41 ?? 41 ? 2? ckyk?kkV iqfyl "kaHkwyky 539 13-45 yqdrs tkQkS- fxj tk-QkS- dksr& [kjs mez 19 cts fNirs vkjksih 01 okyh o"kZ lk-okMZ feyuk rS;kj bLr- u- 13 <hej& 82@02 /kkjk 14@05 Vksyk 109 tk-QkS- ckyk?kkVA iz-vkj- 539 &*& &*& 365 &*& &*& &*& &*& &*& &*& bLr- 79@02@ 109 tk-QkS-

cts lwpuk iz- vkj- 539 iwf.kZek pUnsy ls gS fd fnukad ?kVuk le; dks ?kVuk LFky mijks? vkjksfi;k lUj lafnX/k gkyr esa yqd fNi jgh Fkh] ftls le{k xokgku ?ksjkcanh dj idM+k vkSj uke iwNk rks lgh uke irk ugha crk jgh Fkh] tks lafnX/k izrhr gksus ij /kkjk 41 ?? tk-QkS- ds fxj?rkj dj Fkkuk yk;k x;k bLrxklk /kkjk 109 tk-QkS- dk rS;kj dj U;k;ky; is"k fd;k tkrk gSA

?IR; izfrfyfi? foBksck ikj/kh iz- vkj- 437

12. The SDM has ordered on 7-10-2002 to release the petitioner on bail on furnishing security of Rs. 20,000/-, later on it is mentioned by the SDM in the order sheet that no security could be submitted by the petitioner as such she be sent to the judicial custody of the police. On 10-10-2002 the order sheet of the SDM which has been produced by respondents records thus :--

10&10&2002

Fkkuk izHkkjh dksrokyh dk vkosnu ns[kk] Fkkuk izHkkjh }kjk pwafd vukosfndk dks ekuuh; mPp U;k;ky; ds le{k izLrqr fd;k tkuk gS vr% vukosfndk dks O;f?xr tekur ij eq? fd;k tkosa Fkkuk izHkkjh ekuuh; mPp U;k;ky; ds vkns"k dk icyu djsaA

gLrk-@vLi"V

vuqfoHkkxh; n.Mkf/kdkjh ckyk?kkVA

13. Considering the fact mentioned in return, report submitted by I.G. Police and two different sets of complaint papers filed which are juxtaposed to each other. Documents filed by the petitioner which are certified copies issued by SDM, the complaint filed by the police, arrest memo and statements of Bhajan and Raju of proceeding u/s 109, Cr.PC produced by petitioner are quoted below:--

Complaint is reproduced below:--

izfrfyfi vkosnu i= ?ekad 1941@02 fn- 9&10&2002

nk-iz-?- 262@02 /kkjk 10 tk-QkS- Fkkuk dksrokyh rglhy o ftyk ckyk?kkV U;k;ky;
vuqfoHkkxh; vf/kdkjh ckyk?kkV "kklu rQsZ iqfyl dksrokyh ckyk/kkV fo:) jtuh o
"kaHkwyky [kjs ds izdj.k ij gLrxklk ij ls IR;izfrfyfiA

gLrxklk

Fkkuk & dksrokyh ftyk & ckyk?kkV

bLr-?- 87@02@79 /kkjk 41?2?@109 tk-QkS-

uke izkFkhZ & "kklu rQsZ iqfyl dksrokyh ckyk?kkV

uke vkjksih & jtuh iq=h "kaHkwyky [kjs] mez 19 o"kZ tkfr x<+soky lk- okMZ
uacj 13 <+hejVksyk lkxkSu ou cw<+h ckyk?kkVA

fnukad ?kVuk le; & 6&10&2002 ds 23-45 cts

?kVuk LFky & guqeku pkSd ckyk?kkV

fnukad le; lwpuk & 7&10&2002 ds cts

uke irk xokgku & ?1? Hktu oYn vuarjke mez 50 o"kZ lk- xksaxybZ] ckyk?kkV

?2? jktw firk izseyky ekf.kd mez 28 o"kZ lk- cSgj pkSdh] ckyk-A

?3? e-iz- vkj- iwf.kZek jk.kk ?- 539 Fkkuk dksrokyh ckyk?kkVA

fooj.k %& ekeys dk laf{kIr fooj.k bl izdkj gS fd fnukad ?kVuk le; dks gejkj LVkQ
ds Vkmu Hkze.k dkuwu O;oLFkk fM;qVh ds nkSjku Vkmu ds IEHkzkUr ukxfjdksa }
kjk f''kdk;r dh xbZ fd vukosfndk ckj ckj bl pkSd ?guqeku? esa ?kwers fQjrs utj
vkrh gSA jkLrk pyus okys O;f?;ksa dh fuxkg ml ij iM+rh tks fNVk fdLh o galh etkd
djrh jgrh gSA ftlls vkl ikl jgus okys yksxksa dks {kksHk] ?k` .kk gksrh gS rFkk
muds vkpj.k ls lafnX/krk izrhrh gksus ls vkpj.k lq/kkjus gsrq /kkjk 41 ?2? tk-
QkS- ds rjg fxj ,oa /kkjk 109 tk-QkS- dk bLr- rS;kj dj U;k;ky; izLrq fd;k tkrk gSA

layXu & bLrxklk & 1 izfr

2- fxj?rkjh & 1 izfr

3- dFku & 2 izfr

4- dk;eh lkUgk & 1 izfr

lgh@vLi"V

Fkkuk izHkkjh dksrokyh ckyk?kkVA

Arrest memo is quoted as below :-

izfrfyfi vkosnd i= ?- 1941@02 fnukad 9&10&02

nk-iz-?- 262@02 /kkjk 10 tk-QkS- dksrokyh rglhy o ftyk ckyk?kkV U;k;ky;

vuqfoHkkfx; vf/kdkjh ckyk?kkV "kklu rQsZ iqfyl dksrokyh ckyk?kkV fo:) jatuh o-
"kaHkwyky [kjs ds izdj.k ij fxj?rkjh iapukek ij ls IR; izfrfyfiA

fxj?rkjh iapukek

Fkkuk & dksrokyh ftyk & ckyk?kkV

bLr-?- 87@02@79 /kkjk 41 ?2?@109

fnukad le; fxj- & 6&10&01 ls 23-50 ctsA

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6&10&2002

14. SDM ordered release of petitioner on personal bond as she was required to be produced before this Court. On 22-10-2002 the SDM has mentioned that petitioner was not present, she be summoned, there is no order sheet of subsequent dates filed. In the return filed by respondent Nos. 1, 2 and 6 in Para 3, it has been mentioned that,--

"So far as the detention of the petitioner is concerned it is humbly submitted that it was in relation to a case registered against the petitioner u/s 109 of Cr.PC on 7-10-2002 to 9-10-2002. The petitioner was arrested in relation to the said offence on 6-10-2002 at 23.30 hours and was produced before the SDM on 7-10-2002."

15. In the enquiry "report" submitted by the Inspector General of Police it has been mentioned that Ku. Rajni Khare was arrested in case u/s 109, Cr.PC on 6-10-2002 at 23.30 hours and was sent by the SDM to the judicial custody. She remained upto 9-10-2002. Surprisingly Inspector General of Police has mentioned that petitioner has signed the order sheet dated 7- 10-2002 in this Court whereas she was in police custody on the said date and thereafter in judicial custody. Since this fact is mentioned by a responsible officer not less than Inspector General of Police in the report, I have verified whether petitioner has signed petition on 7-10-2002 in this Court, the fact is totally incorrect. Petitioner has put her signatures on 30-9-2002, the date on which writ petition was presented before this Court. Her signatures are below the note of

presentation on 30-9-2002.

16. The above two sets of papers of the same very complaint are juxta-posed to each other. Shri R.S. Jha, learned Dy. A.G. has informed that for arresting the petitioner in offence u/s 109 Cr.PC action has been taken against Head Constable Ms. Purnima Rana and one increment has been stopped. Two sets of paper of the same complaint u/s 109, Cr.PC goes to show that the affidavit filed before this court by respondent Nos. 1, 2 and 6 is incorrect and even the SDM has made himself part and parcel of the illegal action taken by the police as SDM has issued the certified copies filed by the petitioner of the same case. It is crystal clear that case was concocted against the petitioner u/s 41(2), Cr.PC read with Section 109, Cr.PC, There is dispute whether petitioner was arrested in the night on 6-10-2002 at 23.45 hours or was arrested on 7-10-2002 as mentioned in the set of papers produced by respondents, whether "she was found talking with the boys on 6-10-2002 at Hanuman Chowk or whether she was found picking pockets on "7-10-2002 at 13.45 hours" are the facts which are irreconcilable. It is clear that when petitioner has filed this writ petition before this Court she was taken into custody by the police for no good cause. It is startling that a young girl who was victimized in a case u/s 376, IPC which is pending consideration before the Competent Court was taken into custody by the police from 6-10-2002 for offence u/s 109, Cr.PC. It is also incorrect mention in the return that she was released on 9-10-2002, this Court directed her to be released on 9-10-2002 the SDM has recorded on 10-10-2002 that personal bond was not still submitted and the High Court has required that the petitioner be produced before the Court as such the order of the High Court should be complied with. The certified copy produced by respondents is to be relied upon, the petitioner was in custody as on 10-10-2002 as she could not submit the security of Rs. 20,000/- and was ordered to be released on furnishing personal bond. Thus, incorrect affidavit has been filed before this Court by respondent Nos. 1, 2 and 6 that petitioner was released on 9-10-2002. It is clear that she was not released forthwith as directed by this Court on 9-10-2002.

17. Shri Jha has tried to justify arrest u/s 109, Cr.PC and submitted that petitioner was being pressurized by the accused persons as such action may have been taken by police over- jealously under Sections 109 and 41(2) of Cr.PC, in order to give her "protective umbrella" of "police custody" and "judicial custody" and concerned Head Constable Ms. Purnima Rana has been punished for indulging in the act, that should be enough. The argument is devoid of substance as police in democratic pattern cannot be allowed to function in cavalier method and manner in derogation to Article 21 of Constitution of India. If pressure was being exerted on the petitioner Ku. Rajni by the accused persons, is this method of arrest u/s 109, Cr.PC permitted under the law to be evoked by the police ? Whether petitioner being a young girl of 18 years could be arrested by the police and sent behind the bar for no good cause ? What happens to the concept of liberty ? Is this the treatment to be meted out by the police to a victim of rape within the constitutional frame work ? Is the police entitled to

arrest victim of rape u/s 109, read with Section 41(2) of Cr.PC for no good cause. Fact is clear that proceedings u/s 109, Cr.PC are totally fabricated and whosoever is involved in the same cannot escape the liability of being criminally prosecuted for the wrong done. It is clear that two sets of different papers of case u/s 109, Cr.PC were prepared which are juxta-posed to each other and even otherwise there was absolutely no justification for the arrest of the petitioner who was herself a prosecutrix, merely stoppage of increment of Head Constable Ms. Purnima Rana is not enough.

18. Apart from the fact that petitioner was taken into custody for no good cause from 6-10-2002, as a matter of fact, when this Court ordered the release on 9-10-2002, it appears that she was not released forthwith as apparent from the SDM's order sheet dated 10-10-2002. She was produced with the police before this Court on 11-10-2002 and she expressed her desire to live with her father, she was directed to be left in the custody of her father, it was directed that police not to keep the shadow on the girl, she should be left free in the company of her father and if any untowards incident happen, the responsibility shall be that of respondents. Thus, it is clear that in spite of the orders passed by this Court petitioner was not released forthwith and SDM asked for her personal bond on 10-10-2002 which ought not to have been required by the SDM. Fact remains that even after passing of the order by this Court, the same was not complied with and petitioner was kept with the police and was produced by the police on 11-10-2002 when she was released to go with her father as desired by her. There is Supurdanama on record in the case diary dated 11-10-2002 of release of petitioner executed by Shri Shambhoo Lal. Thus, it is clear that petitioner was kept in custody till 11-10-2002 as apparent from Supurdanama available in Page 62 of the case diary.

19. Not only this that police had taken the prosecutrix in custody from 6-10-2002 to 11-10-2002 but the proceedings of the Magistrate of the case indicates that petitioner was subjected to rape on 8-9-2002, correctness of which is to be determined by the Competent Criminal Court and the police statement of the petitioner was videographed on 9-9-2002 itself after 15 hours sometime in the evening (exact time is not mentioned in the case diary). There is allegation that petitioner was kept by the police at police station from 8-9-2002 to 12-9-2002. Application u/s 57 filed by father of petitioner Shri Shambhoo before the CJM, Balaghat on 11-9-2002 mentioning that police has detained Ku. Rajni Kharc at police station for the last three days and was not releasing her, she was not produced before any Court and keeping her in the custody without any offence was illegal act as such she be asked to be produced before the Court. Court fixed 12-9-2002 and called for the report, no report was submitted on 12-9-2002 and Ku. Rajni Khare was also not produced before the CJM, Balaghat on 12-9-2002. The order sheet dated 12- 9-2002 of Chief Judicial Magistrate shows that displeasure was shown and explanation was called of the incharge police station. An application was filed by father of the petitioner that he was being threatened for filing an application u/s 57 before the CJM Court. On 30-9-2002 explanation

P-4 was submitted by the police in which it is admitted that she was kept at Police Station for the security purpose, Shambhoo Lal was also called and thereafter she was sent to the family members and petitioner submitted an application that her father is a beggar and may not be able to protect her, thus, with her consent, she was sent to Smt. Rajia Bai by the police. It is very surprising that police ought to have considered the prayer of prosecutrix for being sent to Smt. Rajia Bai, there is ring of truth that petitioner was sent to Durg in State of Chhattisgarh as stated by her in her complaint (P-7) that she was taken to Durg, Chhattisgarh and was placed with one unknown woman and resided there from 12-9-2002 till 17-9-2002 and with great difficulty she could come by train from Durg to Gondia and thereafter from Gondia to Balaghat on 18-9-2002. The averments of the petitioner find support from report (P-4) submitted by the Station Officer Incharge.

20. It can be clearly culled out from the above report that she was kept at police station allegedly for security purpose, an application was taken from her for sending her to Rajia Bai and her prayer was "appropriately" considered by the police. I find that she was sent at the "instance of the police" to Durg, State of Chhattisgarh and was placed there from 12-9-2002 to 17-9-2002. In the report submitted by Inspector General of Police dated 29-10-2002, this fact has been found established that "petitioner had gone to Durg". But whether she has gone on her free will or not is the question. The fact which emerge is that petitioner was kept at Police Station after lodging the report of rape, her police statement was videographed, application was taken from her on 9-9-2002 that she does not want to live with her father as her father may take money from accused persons, application was taken from Shambhoo Lal, father of petitioner that accused persons were harassing them. But the fact remains as apparent from P-4 that her prayer for sending her to Durg, Chhattisgarh was succeeded to by the police.

21. Question is whether a prosecutrix is entitled to such a treatment at the hands of the police ? Is this the method of providing police protection to a young girl who is a victim of rape ? She was kept in custody at the police station as apparent from the fact that father filed an application on 11-9-2002 before CJM, Balaghat and police still did not care to produce her on the next date 12-9-2002 she was also not produced before CJM on 13-9-2002 and was instead sent to Durg, Chhattisgarh on 12-9- 2002 when she was required to be produced before the CJM Court. Police deliberately did not produce her in Court on being required by CJM as per order dated 11-9-2002. This is the respect which the police has shown to the orders passed by CJM for production of petitioner before the Court. She was not an accused she was prosecutrix and a victim of rape, she ought to have been produced before the Court on 12-9-2002 and the explanation offered that case diary was before the Sessions Court in connection with the bail submitted by the accused person is of no utility. Application u/s 57 was independent and petitioner ought to have been produced before the Court. Report should have been submitted on 12-9-2002 but police was thinking otherwise and instead of abiding by judicial order of producing her before the

Court and submitting the report had chosen to abide by the so called prayer made by petitioner for sending her to Badi Maa Rajia Bai at Durg, Chhattisgarh. This fact is also in dispute whether she was sent to Rajia Bai or was placed with an unknown woman. The fact remains that judicial order was not complied with and police is not expected to act with the prosecutrix in such a method and manner and to despatch her from one place to another when she had already suffered heinous offence like that of rape; which is the subject-matter of sessions trial. Is this the treatment petitioner deserved ? Is this the method permissible to provide protection ? Least be commented on the conduct of the police concerned, words fail. It is clear that alleged victim was victimized by the police equally. In case, as submitted by Mr. R.S. Jha, learned Dy. A.G., the apprehension that accused persons may influence her was genuine, is this method of the police of keeping a prosecutrix at police station and then sending her to a different destination, permissible one answer is clearly and categorically in negative. Police has committed gross illegality. Police ought to have protected her in other manner if the apprehension was genuine, this is not the method permissible to keep prosecutrix at police station and to despatch her to a different and distant destination at Durg, Chhattisgarh as found established in the enquiry report also by the IG Police. "Consent" or "No Consent" of petitioner, this is not the method permissible to police. There is ring of truth in the submission of petitioner that she was sent without her consent. Police ought not to have kept the petitioner at police station at all, police had no business to keep her into "custody" without arrest in September, and keep her at police station which fact is established. She was not produced before the CJM, Balaghat on an application being filed and later was sent to Chhattisgarh.

22. The action of the police in keeping the petitioner in custody, i.e., at police station in September, 2002 when she was a victim of rape under the guise of providing security is absolutely illegal and later in October, 2002 keeping the petitioner in concocted case u/s 109 read with Section 41(2) of Cr.PC, documents of which are clearly fabricated, is violative of rights of petitioner enshrined under Articles 21 and 22(2) of Constitution of India. The mischief of malicious intention is not washed away on petitioner being set free with the intervention of this Court.

23. The Apex Court in Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , considered the question of violation of fundamental rights of personal liberty. Shri Bhim Singh was arrested with mischievous or malicious intent and his constitutional and legal rights were invaded, the Apex Court held that mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases the Court has jurisdiction to compensate the victim by awarding suitable monetary compensation. In Rudul Sah Vs. State of Bihar and Another, and Sebastian M. Hongray v. Union of India AIR 1984 SC 1026, it has been laid down that if a personal right of liberty is violated, person should be compensated suitably.

24. In the instant case, it is apparent that power u/s 109 read with Section 41(2) of Cr.PC has been maliciously and illegally exercised and it is contended by Shri R.S. Jha, learned Dy. A.G. that in order to give police protection from tyrannical behaviour of the accused persons petitioner may have been taken into custody and he has further submitted that concerned police head constable has been visited with the penalty of withholding of one increment, that should be enough to set the matter at rest. The submission raised is totally unacceptable and is liable to be rejected.

25. Section 109 of Cr.PC is with regard to security for good behaviour of a suspected person. When a Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner provided in the Code of Criminal Procedure, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit. The core of offence lies in concealing one's presence and the purpose of concealing being to commit cognizable offence. It is not shown that petitioner was, as a matter of fact, concealing herself or was going to commit cognizable offence, that apart Section 41 of Code of Criminal Procedure deals with power of the police to arrest without warrant. Exigencies have been prescribed under Sub-section (1) of Section 41 which are not shown to be existing. Sub-section (2) of Section 41, Cr.PC was invoked which prescribes that any officer in-charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of the persons specified in Section 109 or Section 110 of Cr.PC. When Section 109, Cr.PC itself is not attracted, Sub-section (2) of Section 41 could not be exercised. As already discussed above, there is fabrication in the case, two sets of documents were fabricated. It is a clear case of illegal detention by the police of the petitioner from 6-10-2002 to 10-10-2002 and earlier also the petitioner after she lodged the first information report being the victim of rape was kept in police station and then sent to Durg, State of Chhattisgarh. Both these acts constitute violation of the personal liberty of the petitioner and it was not the method of providing protection to the petitioner which is permissible and police cannot be allowed to act in such a reckless manner in utter disregard to the sympathy to the victim of rape and again police illegally detained her in a fabricated case u/s 109 read with Section 41(2) of Cr.PC. Petitioner is a young girl of 18-19 years, a permanent scar has been caused on her life by illegally detaining her. Her dreams have been nipped in the bud. The conduct of the police is most reprehensible, oppressive and distinction has been lost into disciplined force in Uniform and whether it is indisciplined criminal force in Uniform.

26. It is a fit case where not only the criminal investigation of the persons who have manufactured the case u/s 109, Cr.PC is called for. In addition the petitioner is required to be suitably compensated.

27. As State police is involved, let C.B.I. investigate the matter and fix the responsibility over the police official for illegally detaining the petitioner for offence u/s 109, Cr.PC. The responsibility of fabricating the two sets of papers be also determined and how the SDM has issued and entertained two sets of papers be also investigated by the CBI and the guilty persons whosoever high, he may be booked and appropriate action in accordance with law be taken.

28. With respect to compensation, considering the fact that age of the petitioner is 18-19 years and she was illegally detained, as discussed in the preceding paragraphs, she is required to be suitably compensated. The State Government is directed to pay compensation of Rs. 1,00,000/- (Rs. One lac) to the petitioner. The amount be kept in the fixed deposit and fixed deposit be dealt with as per order of the District Judge, Balaghat, and amount as and when so required for the welfare of the petitioner has to be released to her. This direction is being made considering the poor background of the petitioner to which she belongs.

29. Resultantly, the writ petition is allowed. Criminal prosecution of the petitioner in case u/s 109 read with Section 41(2) of Cr.PC is quashed. As directed above, the guilty be booked, investigation be made by the CBI and compensation of Rs. 1,00,000/- (Rs. One lac) be paid to the petitioner to be dealt with in the manner aforesaid. Cost of this petition is quantified at Rs. 1,000/- to be borne by the State Government.