

Chief Justice's Court

Case :- CRIMINAL WRIT-PUBLIC INTEREST LITIGATION No. - 1 of 2018

Petitioner :- In Re.- An Unfortunate Incident In Unnao Of Rape And Murder Published In Various Newspapers

Respondent :- State Of U.P.

Counsel for Petitioner :- Gopal Swarup Chaturvedi

Hon'ble Dilip B. Bhosale, Chief Justice

Hon'ble Suneet Kumar, J.

Heard Mr. Gopal S. Chaturvedi, learned Senior Advocate, Amicus Curiae and learned Advocate General.

On 11 April 2018, Mr. Gopal Chaturvedi, at 10.00 a.m. presented a letter in the open Court with news paper cuttings, drawing our attention to the incident at Unnao, where a minor girl was allegedly raped by a Member of Legislative Assembly, Mr. Kuldeep Singh Sengar. We immediately directed the office to register the letter as Public Interest Litigation. Our order dated 11.04.2018, reads thus:

“Mr. Gopal S. Chaturvedi, learned Senior Advocate, presented a letter addressed to the Chief Justice, requesting to take a suo motu cognizance of the incident that has taken place in district Unnao, where a girl was allegedly raped by a Member of Legislative Assembly, Mr. Kuldeep Singh Sengar of Bangarmau Constituency and his aides. He submits that though the offence came to be registered on the basis of first information report lodged by father of the girl, naming Mr. Kuldeep Singh Sengar as main accused, the Investigating Agency has not arrested him till today.

What is disturbing, as submitted by Mr. Chaturvedi, is that the father of the prosecutrix, for no reason, came to be arrested and was in custody, where, we are informed, he was mercilessly beaten and succumbed to the injuries yesterday, i.e. 10.4.2018. We fail to understand why the Investigating Agency instead of arresting

accused persons, they arrested complainant, in connection with this case.

We direct the office to register the letter of Mr. Chaturvedi, learned Senior Advocate dated 11.4.2018 as PIL and place it before this Court tomorrow, as fresh matter. We also direct Mr. Ramanand Pandey, learned Addl. Chief Standing Counsel for the State, to inform the Advocate General/Addl. Advocate General to appear in the case. We request Mr. Gopal S. Chaturvedi to appear in the case as *Amicus Curiae*.

S.O. to 12.4.2018. as fresh matter.”

Yesterday when the matter was taken up, learned Advocate General, assisted by Additional Advocate General Mr. Neeraj Tripathi with two top police officers, including the one who led the SIT constituted by the Government of Uttar Pradesh, with the entire record of cases were present in the Court. We have heard Mr. Gopal Chaturvedi and Advocate General at considerable length and with their assistance gone through the material to which our attention was drawn.

At the outset, learned Advocate General has informed the Court that First Information Report (FIR) was registered by mother of the prosecutrix, bearing Case Crime No. 0316, on 20 June 2017, for the offences under Sections 363, 366 IPC, against Awdhesh Tiwari and Shubham. During investigation, one Brijesh Yadav along with the other named accused was taken into custody, and offence under Section 376-D IPC and 3/4 Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was added. The investigation in this case got over long back and accused have been charge-sheeted, thereafter, enlarged on bail. This FIR was in connection with the alleged incident of kidnapping and gang rape occurred during 11 June and 20 June 2017. It is not in dispute that the prosecutrix is minor - aged about 17 years and has studied upto sixth standard.

It appears, that according to the complaint and the prosecutrix, though they named Kuldeep Singh, MLA also in the

said complaint, the police did not take down his name nor did they allow her to make any allegations/complaint against him. In other words, her complaint against Kuldeep Singh, was, however, not registered. Consequently, prosecutrix made a complaint to the Chief Minister, in her own hand writing, of the incidents that had occurred on 4 June 2017 and between 11th and 20th June 2017, making allegation of rape, in particular against Kuldeep Singh, who allegedly committed rape on that day (04.06.2017). The complaint was endorsed to the Superintendent of Police, Unnao, by the Special Secretary to the Chief Minister to make investigation and submit a report within a week. But till midnight of 11 April 2018, no crime/FIR was registered against Kuldeep Singh and his aid.

We have carefully gone through the complaint of the prosecutrix supplied by the Advocate General. As per the version of the prosecutrix, she was enticed on the night of 11 June 2017, by her neighbour on the pretext of providing her job. Awdhesh and Shubham in the car raped her repeatedly. She tried to escape, but was beaten and intimidated. She was kept in the custody of Shubham at his house, where, she was repeatedly raped by other persons. From the narration of facts, it appears that the accused named and unnamed, therein, were known to Kuldeep Singh. It is alleged that she was sold for Rs.60,000/- to some person at Agra. At early hours of 20 June 2017, the police recovered her and had taken her to Police Station Maakhi. It is alleged that en route she was continuously threatened and warned by the police officials to say whatever she would be instructed or else her father shall be killed as has been directed by Kuldeep Singh. Serious allegation has been made in the complaint against the conduct of the officials of Police Station Maakhi, Station House Officer and Medical Doctor. It is alleged that she was not examined by the Doctor, rather, the Doctor advised to maintain good relation with Kuldeep Singh. Thereafter, on 30 June 2017, her parents took her from Child Welfare Society to Delhi in frightened and tormented

mental state. At the place of her Uncle (Chacha) at Delhi, she disclosed to her Aunt (Chachi) that she was raped by Kuldeep Singh on 4 June 2017. Prosecutrix was thereafter taken by her Chachi to Lucknow to get the FIR registered against Kuldeep Singh, Doctor, Station House Officer and Superintendent of Police, Unnao. Since no cognizance of her complaint was taken or it was reduced to writing, she made written complaint to the CM as narrated above.

Despite the said complaint being endorsed by the office of the Chief Minister, nothing was done by the Circle Officer, at the behest of Kuldeep Singh, rather, coercion was being exercised upon the prosecutrix and her family members not to proceed with her complaint. It appears, thereafter, as a last resort, mother of the prosecutrix approached the Chief Judicial Magistrate by filing an application under Section 156(3) CrPC on 12 February 2018. On the application, a report was sought from Police Station, Maakhi. We are informed that without waiting for the order of the Magistrate, on 12 April 2018, crime has been registered under Sections 363, 366, 376, 506 IPC and 3/4 of POCSO Act (FIR No. 0096) against Kuldeep Singh for the incident dated 4 June 2017, alleging rape by Kuldeep Singh. It is alleged that in the intervening period, several false cases were lodged against father and family members of the prosecutrix, including FIR No. 89 of 2018 under Sections 323, 504, 506 of IPC and Sections 3/25 of Arms Act, at the behest of Kuldeep Singh to pressurize them to fall in line with the dictates of Kuldeep Singh. Thereafter, father of the prosecutrix was assaulted by Atul Singh, brother of Kuldeep Singh and his named aides and handed over to the police. So much so was the pressure mounted upon family members and the brutal assault inflicted upon the father of the prosecutrix, he succumbed to the injuries on 9 April 2018. We are informed that postmortem shows serious injuries (internal as well as external) on the body of the deceased. We are informed that an FIR (crime) has been registered against the brother of Kuldeep Singh and few

others, bearing FIR No. 0090 of 2018 under Sections 147, 302, 323 and 504 IPC. One day before the death of the deceased-father, prosecutrix attempted self immolation in front of the Chief Minister's residence due to the frustration received by her and the family at the hands of the law and order machinery of the State, in particular, district Unnao.

It appears that the accused Kuldeep Singh, MLA of the ruling party being involved in the crime drew media attention. Thereafter, it appears that the Director General of Police (DGP) vide communication dated 10 April 2018 constituted SIT and directed the Additional Director General of Police (ADG), Lucknow Zone, being head of the SIT to enquire into the incident and report. Pursuant thereof, ADG along with the members of the Special Investigating Team (SIT) visited the village Maakhi, and the spot and personally met the family members/prosecutrix at their house and submitted a confidential report dated 11 April 2018. The report reveals that on interacting with the family members and the prosecutrix, the facts narrated in the complaint of the prosecutrix made to the Chief Minister on 17 August 2017, was reiterated, including the allegation of rape against Kuldeep Singh. It is noted that on the complaint, the prosecutrix was called by the Circle Officer, Shafipur, and she stood by the averments stated in her complaint. It appears that nothing was done by the Circle Officer. It is further noted that on the false complaint lodged by Kuldeep Singh, Sub Inspector K.P. Singh, had on several occasions visited Mahesh Singh, brother of the deceased (Chacha), at Delhi, apprehending arrest, Mahesh Singh obtained order of arrest stay. It is further noted that the deceased was challaned under Section 107/116/151 IPC on 3 April 2018; Atul Singh, brother of Kuldeep Singh, alongwith six named persons brutally assaulted the deceased who, thereafter, was sent to the hospital. On complaint, FIR was lodged but the name of Atul Singh as an accused was deliberately omitted by the Thana. The Chief Medical Officer despite injuries declared the deceased fit,

and was sent to jail. It was stated before the ADG that since June 2017 continuous calls were made by Kuldeep Singh on the mobile of the brother of the deceased. The prosecutrix narrated the incident of rape by Kuldeep Singh on 4 June 2017.

In the backdrop of the facts that emerge from the material placed by the learned Advocate General and in particular the report of the ADG, prima facie, it is evident that the accused persons involved in the incident of 11 June 2017 are directly having connection with Kuldeep Singh. The prosecutrix was allegedly raped on 4 June 2017 by Kuldeep Singh, thereafter, since 11 June 2017 until her recovery on 20 June 2017 she was repeatedly gang raped by the persons charge-sheeted in that case. However, no case was registered against Kuldeep Singh, which was an incident stated by the prosecutrix in the same complaint. The SIT report reveals as to how police personnels and doctors were/are under the influence of Kuldeep Singh and how they tampered with evidence and tried to create terror and intimidated the prosecutrix and her family members.

The disturbing feature of the case is that the law and order machinery and the government officials were directly in league and under the influence of Kuldeep Singh. The Doctor did not examine the prosecutrix, nor did the Circle Officer, Shafipur, register the crime, though hand written complaint of the prosecutrix was sent from the office of the Chief Minister. On petty offence, father of prosecutrix was beaten up by the brother, and the goons of Kuldeep Singh and was arrested and in the custody was beaten mercilessly. It further appears that false cases were lodged against the family members. Finally, father of the prosecutrix succumbed to injuries. The prosecutrix unable to face the pressures exercised upon her by Kuldeep Singh, who was having the backing of the law and order machinery of district Unnao, attempted to immolate herself to draw the attention of the society that she needs help and protection of the custodians of

law, which was put to the winds at the behest of the accused Kuldeep Singh.

We are constrained to record the approach and attitude of the learned Advocate General, during the course of hearing, in contending that no accused person, including Kuldeep Singh, can be arrested without the Investigating Officer following the procedure prescribed under CrPC and collecting evidence in support of the allegation of rape.

It is sought to be urged that the FIR has been registered by the police against Kuldeep Singh on 12 April 2018 and that the Investigating Officer after recording statement of witnesses, including the accused, and the prosecutrix under Section 161 CrPC would proceed, and on credible evidence, the accused may be arrested but as on date, he submits that the accused Kuldeep Singh would not be arrested on merely registering of the FIR. The approach of the learned Advocate General is not only appalling but shocks the conscience of the Court in the backdrop of the instant case.

The prosecutrix and her family members have been running from post to pillar but her complaint was not registered, despite approaching the Chief Minister. The influence of the accused Kuldeep Singh in the district police administration is such that the Circle Officer also declined to lodge the report on the complaint duly forwarded by the office of the Chief Minister. The Medical Officer declined to examine the prosecutrix, mandatorily required, where a woman alleges rape. Even the procedure for taking down the FIR/Crime 0316 dated 20.06.2017 under the provisions of CrPC was not followed. The complaint was not reduced to writing by a female police personnel and video graphed. False cases were lodged against the Chacha of the prosecutrix and on petty offence father was arrested and brutally assaulted. The Chief Medical Officer furnished fitness certificate and sent the father to jail

where he succumbed to injuries. The accused Kuldeep Singh from the narration of facts in the report of ADG dated 11 April 2018, taken on face value, clearly reflects that the accused has been using his office and influence with impunity to tamper evidence and witnesses, further, has exercised undue influence with law and order machinery to manipulate and coerce the family members of the prosecutrix and brutally assaulted her father.

In the backdrop of the facts noted by the SIT, learned Advocate General on repeated query vehemently and categorically stated that the Investigating Officer will not arrest the accused Kuldeep Singh until statements under Section 161/164 CrPC are recorded and in the opinion of the Investigating Officer the accused is, prima facie, involved in the commission of the crime.

In support of his submission, reliance has been placed on the decision rendered in **D. Venkatasubramaniam & Ors. Vs. M.K. Mohan Krishnamachari & Anr., (2009) 10 SCC 488**, wherein, Supreme Court referred to the observation made in **M.C. Abraham & Anr. Vs. State of Maharashtra & Ors., (2003) 2 SCC 649**, which reads thus:

*“14. ... Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. **In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the***

Court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection.

(emphasis supplied)

Learned Advocate General further placed reliance on the decision rendered in **Joginder Kumar Vs. State of U.P. & Ors., (1994) 4 SCC 260.**

There can be no quarrel or two opinion on the proposition that is being advanced by learned Advocate General, the question that arises in the given facts of the case, whether it is open to the law enforcing agency to let the accused move freely and give him further opportunity to tamper evidence and witnesses with impunity. The incident that was reported way back on 17 August 2017 came to be registered on 12 April 2018, that too after the death of the father of the prosecutrix. We are informed by learned Advocate General that few police personnels and doctors have been suspended on the basis of SIT report. This further supports the contentions urged by Mr. Gopal Chaturvedi that immediate arrest of Kuldeep Singh is necessary. We are further informed that the police personnels and doctors who tried to tamper with the evidence and acted under the influence of Kuldeep Singh have been placed under suspension. That being so, it was submitted that a lot of damage has already been done and to avoid further damage, the immediate arrest of the accused in particular Kuldeep Singh is must.

Chapter V of CrPC deals with the arrest of persons. Section

41 is the main Section, providing for situations when police may arrest without warrant. Section 42 specifies yet another situation where a police officer can arrest a person. We are, however, not concerned with the said provision for the case before us. Reading of the provisions of Sections 41 and 42, however, show the width of the power of arrest vested in police officers. Sub-section (1) of Section 41, in particular clauses (a) and (b), cover the situations where a person who is “concerned in any cognizable offence”; a person against whom a reasonable complaint is made that he is “concerned in a cognizable offence”; a person against whom “credible information” is received, showing that he is “concerned in any cognizable offence” and a person who is reasonably suspected of being “concerned any cognizable offence”. The generality of language and the consequent wide discretion vesting in police officers is, indeed, enormous.

It is true that, often, the wide discretion vesting in the police officers is either abused or misused or the power of arrest is wrongly and illegally exercised. The efforts of the courts, and in particular of the Supreme Court over a period of time, therefore, has been to circumscribe the vast discretionary power vested by law in police by imposing several safeguards and to regulate it by laying down numerous guidelines and by subjecting the said power to several conditionalities. The effort throughout has been to prevent its abuse while leaving it free to discharge the functions entrusted to the police. In **Joginder Kumar (supra)**, the powers of arrest and its exercise has been dealt with at length. It would be appropriate to refer to certain observations in the judgment. In that case, it was alleged that the SHO had detained the petitioner for five days, implicating him falsely in some criminal case. When the Supreme Court had issued notice, the SSP alongwith the petitioner appeared before Court and stated that the petitioner was not in detention at all and that his help was taken for detecting some cases relating to abduction and

the petitioner was helpful in cooperating with the police. While dealing with this case, the Supreme Court referred to the Third Report of the National Police Commission and reproduced the suggestions made therein, which read as under:

“An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....”

(emphasis supplied)

After quoting the suggestions as above, the Supreme Court in the said paragraph, observed thus:

“... No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a

routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

From bare perusal of the above observations made in the light of the suggestions made in the Third Report of the National Police Commission, it appears to us that an arrest during the investigation of a cognizable case is justified where the case involves a grave offence like murder, dacoity, robbery, rape etc., in order to bring the movements of the accused under restraint to infuse confidence among the terror-stricken victims. As observed earlier, the power of arrest is enormous and has also been the very source of abuse and misuse. Abuse and misuse of the power to arrest, in our opinion, does not only mean causing arrest without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complainant and reasonable belief both as to the person's complicity and need to effect arrest, but would also mean not exercising the discretion by effecting of arrest even in cases involving grave offences like murder and rape/gang rape of minor, as in the present case. In other words, there is every possibility that police officer/investigating agency may abuse and misuse the power by not arresting an accused, may be to help the accused, he being an

influential person, in a case where arrest is necessary to avoid further damage to the case or to prevent accused from tampering with the evidence or terrorizing the witnesses and also to instill confidence not only amongst the terror-stricken victims but even the people at large. The judgments of the Supreme Court relied upon, would show that in all those cases, the arrest was effected illegally, wrongly and without any justification. But in a case, like the case in hand, where it is clear that accused have done everything that is possible to create terror in minds of victims, to tamper with evidence and kill the father of the prosecutrix, in the presence and with the connivance of the police. The Supreme Court, time and again, has taken cognizance of cases against politicians, elected Members of Legislative Assembly or the Parliament, their involvement in criminal cases and delay in disposal of cases pending against them. The present case, perhaps, is also one of such cases which, so far, has not been handled fairly, properly and honestly. We are of the opinion that at least now, the police should act promptly and not give an impression that they are trying to shield the accused persons, by following procedure unknown to the criminal jurisprudence, stating that after recording statements of the witness including that of the accused and the prosecutrix under Section 161, the IO will decide whether arrest is necessary in the case of rape on minor girl and murder. This is a classic case where we find that the accused persons have not kept a single stone unturned to terrorize not only victim/prosecutrix but her family members and other witnesses. The victim has lost her father merely because cognizance was not taken of her complaint made in August 2017. Had the police taken cognizance of the complaint to the Chief Minister and forwarded to the concerned police station at that stage, perhaps, further damage, including the death of prosecutrix's father would not have taken place. The manner in which the entire incident, starting from 4 June 2017 alleging rape by Kuldeep Singh till the First Information Report came to be

registered against him on 11.04.2018, we find that every incident/occurrence are intermingled. The State Government, in view thereof, seems to have decided to transfer investigation only in three crimes, (i.e. 0089 of 2018, 0090 of 2018 and 0096 of 2018), as submitted by learned Advocate General, to CBI. No explanation is offered for leaving the first FIR 0316 of 2017, even though there was observation in the report of SIT that further investigation in the said case is necessary.

It is not denied by learned Advocate General that the case involves commission of a grave and heinous offence like rape, which has been disclosed by the prosecutrix and her family members to the officer of the rank of Additional DGP, further, the arrest of the accused in the circumstances can be considered justified and necessary, not only to restrain his movement but also to infuse confidence in the victim and her family members of fair investigation and to restrain the accused from influencing the investigation and tampering with evidence and witnesses.

We are informed by learned Advocate General that State Government has taken a decision to transfer the investigation of the crimes being Nos. 0089 of 2018, 0090 of 2018 and 0096 of 2018 to the Central Bureau of Investigation (CBI), but, on query, he initially submitted that it would take some time, and in the backdrop of the decision of the government, the Investigating Officer may not proceed with the investigation further, for the reason that accusation may be inflicted upon the government that the investigation may not be properly conducted. The stand of the learned Advocate General is that Investigating Officer is not inclined to effect arrest of the accused person even in the backdrop of the startling facts and the consistent stand of the prosecutrix and her family member that the offence was committed by the accused Kuldeep Singh and for the past nine months the accused has not only interfered with the investigation but has made attempts to tamper evidence, coerce and pressurize

the prosecutrix and her family members from deposing against him.

The Supreme Court in **Maneka Gandhi Vs. Union of India, AIR 1978 SC 597**, observed as under:

“...Procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Thus, understood, 'procedure' must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilised process. What is fundamental is life and liberty. What is procedural is the manner of its exercise. This quality of fairness in the process is emphasised by the strong word 'established' which means 'settled firmly' not wantonly or whimsically. If it is rooted in the legal consciousness of the community it becomes 'established' procedure. And 'law' leaves little doubt that it is little regarded as just since law is the means and justice is the end. Procedural safeguards are the indispensable essence of liberty. In fact, the history of personal liberty is largely the history of procedural safeguards and right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights: observance of fundamental rights is not regarded as good politics and their transgression as bad politics. To sum up, 'procedure' in Article 21 means fair, not formal procedure. 'Law' is reasonable law, not any enacted piece.”

Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; “I suspect but I cannot prove”. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. Reasonable suspicion has not been equated with prima facie proof. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all...**[Vide: Shaaban Bin Hussien Vs. Chong Fook Kam, (1969) 3 All ER 1626]**

The Courts, and in particular the High Courts, are the guardians of the life and liberty of the citizens and if there is any flavour of deliberate misuse of the authority vested in the Investigating Authority, the High Court or the Supreme Court may certainly step in to correct such injustice or failure of justice. When on the failure of the administrative machinery a mandamus can be directed to be issued by this Court to grant relief to the victim to which he/she was entitled from the authorities. **[Vide: Kedar Narayan Parida & Ors. Vs. State of Orissa & Anr., 2009 (9) SCC 538]**

The approach of the learned Advocate General not only exudes an unpleasant flavour, but raises doubts about the bona fides of the police authorities at the highest level. We are unable to persuade ourselves in accepting the contention of learned Advocate General that the accused in the circumstances cannot be arrested. In our opinion, arrest of the accused in the present case is necessarily required to safeguard the majesty of law and the dignity of the prosecutrix and to instill confidence that free and fair investigation shall be undertaken by the Investigating agency.

The purpose of CrPC is to facilitate the enquiry and investigation into the commission/omission of the crimes. No person or State officer can take technical pleas which does not sub-serve the interest of investigation or fails to protect the victim of heinous crime. If the argument and the stand of learned Advocate General is to be accepted, it will send a wrong and devastating message in the society and would directly facilitate the cause of the accused in the instant case and the inaction of the Investigating Agency in bringing the culprit to the book.

We are aware that the Supreme Court, time and again, has observed that Courts are not supposed to interfere with the investigation, since it is prerogative of the Investigating Agency to consider and decide whether arrest of an accused is necessary. It

is left to the Investigating Officer, under the provisions of CrPC to decide whether arrest of any person, having allegedly committed cognizable offence or against whom reasonable complaint has been made or credible information has been received or a reasonable suspicion exists, of his having been so concerned, is necessary and Courts are not supposed to issue any directions in such cases and interfere with the investigation. Having due regard to the view expressed by the Supreme Court and being conscious of our powers under Article 226 of the Constitution while dealing with PIL, we are inclined to issue directions to arrest the accused persons in view of the peculiar facts and circumstances of the case as reflected in foregoing paragraphs, in particular the manner in which the accused persons have, so far, made all efforts to tamper with the evidence or to win over not only the police personnel but even doctors who, ultimately, have been placed under suspension in view of the observations made by SIT after carrying out preliminary investigation into the entire incident. Even after having observed that the accused persons, police personnel and doctors caused disappearance of evidence of offence, the Investigating Agency, as submitted by learned Advocate General, is not prepared to arrest the accused persons is disturbing and also sounds unnatural. Even at this stage, learned Advocate General submits that there is no sufficient evidence to cause arrest, and the IO will take further steps only after further investigation in accordance with law and, in the course of investigation, if the offence is disclosed, they would arrest the accused persons. We specifically asked learned Advocate General as to whether such procedure is being followed by the Investigating Agency in the State of Uttar Pradesh in all such cases, he could not reply our query.

It is well settled and as has been observed by the Supreme Court in **State of West Bengal & Ors. Vs. Committee for Protection of Democratic Rights, West Bengal & Ors., AIR**

2010 SC 1476, that though the Delhi Special Police Establishment Act, 1946 (for short “the Special Police Act”) itself provides that subject to consent by the State, the CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the High Court under Article 226 of the Constitution can also exercise its power of judicial review and direct the CBI to take up the investigation within the jurisdiction of the State. While passing any such order, the Court, however, must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. In other words, this extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Having regard to these observations, we deem it appropriate that further investigation of the FIR (Crime 0316 dated 20.06.2017) should also be done by the CBI. Insofar as this offence (Crime 0316 dated 20.06.2017) is concerned, we find, not only on the basis of the facts and circumstances placed before us but also on the basis of the observations made by SIT, which prompted the State Government to make request to transfer the investigation of other crimes (i.e. 0089 of 2018, 0090 of 2018 and 0096 of 2018) to CBI, the investigation was not fair and further investigation is necessary. Even the SIT in its report has observed that further investigation in the crime is necessary. It is pertinent to note that in the offence of kidnapping and gang rape (Crime 0316 dated 20.06.2017), we are informed that immediately after the arrest, though there was a charge of gang rape under Section 376-D of IPC, accused came to be released on bail. In that case, as submitted on behalf of the prosecutrix, she was not allowed to take name of Mr. Kuldeep Singh and, therefore, she made complaint to the Chief Minister dated 17.08.2017, in which she had narrated how the incident of

kidnapping and gang rape and before that on 4 June 2017 rape by Kuldeep Singh was committed. Despite this, no efforts of whatsoever nature are made by the police to either further investigate the said crime under Section 173(8) of CrPC or to reopen the investigation especially by entrusting the same to some competent Investigating Officer. We are aware that investigation in respect of the said crime (0316 of 2017) has already been completed by the police and even the charge sheet has been submitted to the Court. It is not for, ordinarily, to reopen the investigation especially by entrusting the same to the specialised agency like CBI. Nevertheless, in a given situation, to do justice between the parties and instill confidence in the public mind, it may become necessary to ask the CBI to investigate the said crime. In the face of the allegations in all four cases and keeping in view the facts and circumstances of the case registered (in June), we are of the view that the ends of justice would be met if we direct the CBI to hold further investigation or reopen the investigation in respect of the offence of kidnapping and gang rape committed between 11 June and 20 June 2017 as per the FIR lodged by the mother of prosecutrix.

We, in the circumstances, are inclined to direct the Investigating Agency to cause arrest of the accused named in First Information Report No. 0096 dated 12.04.2018 forthwith.

In the circumstances, we issue the following directions:

(1) The Investigating Officer/CBI, as the case may be, shall arrest Kuldeep Singh and the other accused in FIR No. 0096 registered on 12.04.2018 for the offences punishable under Sections 363, 366, 376, 506 of IPC and Sections 3 and 4 of POCSO Act forthwith and carry out further investigation within the time stipulated under the provisions of CrPC. The IO is directed to comply with this direction as long as he continues to be an IO and also till the investigation is taken over by the CBI. It is needless to

mention that if the CBI, before compliance of this direction by the IO, takes over the investigation of crime, shall arrest Kuldeep Singh and the other accused forthwith and carry out further investigation within the time stipulated under the provisions of CrPC.

(2) The CBI is directed to carry out further investigation/re-open the investigation of the crime, bearing Case Crime No. 0316 registered on 20 June 2017 for the offences under Sections 363, 366, 376-D of IPC and Sections 3 and 4 of POCSO Act alongwith other three crimes being Nos. 0089 of 2018, 0090 of 2018 and 0096 of 2018 and take it to its logical end within the prescribed time.

(3) The IO/CBI shall follow the procedure strictly as laid down under the provisions of CrPC, for investigating the offences under Sections 376/376-D of IPC and the provisions of POCSO Act, in particular.

(4) The CBI may also consider whether cancellation of bail of all the accused in Crime No. 0316 of 2017 is necessary for carrying out free and fair further investigation.

(5) The IO/CBI shall place before this Court the status report on 02.05.2018 in the morning at 10.00 a.m. The office is directed to place this matter first on board on the next date of listing.

Order Date :- 13.04.2018

AHA

(Dilip B Bhosale, CJ)

(Suneet Kumar, J)