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ITEM NO.32

COURT NO.6

SECTION X

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

WRIT PETITION(S)(CRIMINAL) NO(S). 134/2022

ASHOK KUMAR

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(IA No. 49391/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 192035/2024 - EXEMPTION FROM FILING O.T., IA No. 182530/2024 - EXEMPTION FROM FILING O.T. AND IA No. 151243/2024 - EXTENSION OF TIME)

Date : 09-09-2024 This matter was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

**For Petitioner(s) Mr. C.K. Rai, AOR
Mr. Arvind Kumar Tiwari, Adv.
Mrs. Anuradha Roy, Adv.
Mr. Vinay Kumar Gupta, Adv.**

**For Respondent(s) Mr. K.M. Nataraj, ASG
Ms. Garima Prashad, Sr. Adv./AAG
Mr. Sharan Thakur, Adv.
Ms. Sakshi Kakkar, AOR
Mr. Sidharth Thakur, Adv.
Mr. Varsal Joshi, Adv.**

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

1. We have perused the affidavits dated 14th August, 2024 and 25th August, 2024 of Shri Rajesh Kumar Singh, Principal Secretary, Prison Administration and Reforms Department, State of Uttar Pradesh.

2. *Prima facie*, it appears to us that the stand taken by Shri Rajesh Kumar Singh, Principal Secretary, in the affidavits is

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completely contrary to the statements made by him while he appeared through video conference on 12th August, 2024. The statements made by him have been recorded in the said order dated 12th August, 2024. Therefore, *prima facie*, it appears to us that this Officer has filed false affidavits. Therefore, we issue notice to him calling upon him to show cause why action for criminal contempt should not be initiated against him and why action should not be initiated against him for perjury. The notice is made returnable on 27th September, 2024.

3. On 1st April, 2024, this Court directed the State of Uttar Pradesh to consider the case of the petitioner for grant of permanent remission in accordance with the applicable policy and pass an appropriate order on or before 10th May, 2024. On 13th May, 2024, this Court clarified that the Code of Conduct on account of elections of Lok Sabha will not come in the way of the Authorities considering the prayer for grant of permanent remission made by the petitioner. Though there was no application made by the State Government, on 13th May, 2024, this Court extended the time till 15th July, 2024 to decide the prayer for grant of permanent remission.

4. On 15th July, 2024, when this Petition appeared before this Court, an application dated 13th July, 2024 was tendered on behalf of the State of Uttar Pradesh for extension of time to comply with the order dated 13th May, 2024. That application is on record. The only ground set out therein for seeking extension of time was that the case of the petitioner for consideration of permanent remission

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has been forwarded to the concerned Authority with Form A/license and a decision thereon is awaited.

5. Now, in the subsequent affidavits filed by Shri Rajesh Kumar Singh, Principal Secretary, Prison Administration and Reforms Department on behalf of the State of Uttar Pradesh, the stand has undergone a drastic change. In paragraph 5 (g) of the affidavit dated 14th August, 2024 of Shri Rajesh Kumar Singh, it is stated that the order dated 13th May, 2024 was not officially communicated to the deponent (Shri Rajesh Kumar Singh, Principal Secretary) by the Standing Counsel and that the said order was communicated to the Office of the Principal Secretary on 25th May, 2024 through e-mail. It is further stated that a note of the same was taken by the concerned Section Officer on 6th June, 2024. The same stand has been reiterated in the affidavit dated 25th August, 2024. The entire blame is now sought to be shifted on the Advocate-on-Record/Standing Counsel representing the State of Uttar Pradesh by stating that the order dated 13th May, 2024 was not communicated till 25th May, 2024. As stated earlier, in the application for extension of time dated 13th July, 2024 filed on behalf of the State of Uttar Pradesh, there is not even a word that the order dated 13th May, 2024 was not communicated till 25th May, 2024 and that the Section Officer took note of the said order for the first time on 6th June, 2024. Therefore, what is stated by the State Government in both the affidavits is clearly an afterthought. The officers of the State Government were aware that in view of the order dated 1st April, 2024, this Writ Petition was directed to be

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listed on 13th May, 2024. Therefore, it was the duty of the concerned officer of the State Government to ascertain from the Advocate-on-Record/Standing Counsel for the State of Uttar Pradesh as to what transpired on 13th May, 2024. We may note here that the Jail Superintendent of the District Jail, Ghaziabad, Uttar Pradesh, was fully aware of the order dated 13th May, 2024 as he has affirmed an affidavit in support of the application for extension of time dated 13th July, 2024.

6. Therefore, it is very unfortunate that the officers of the State Government have now shifted the entire blame on the Advocate-on-Record/Standing Counsel who represented the State of Uttar Pradesh in this Court. The matter does not rest here. As the Jail Superintendent was aware that the case was fixed for 15th July, 2024, obviously, he must be aware of the orders passed on 13th May, 2024 and 15th July, 2024. If the case of the Jail Superintendent was that he did not receive the order dated 13th May, 2024 till 25th May, 2024, that would have been the first averment in the application dated 13th July, 2024. *Prima facie*, the case made out that the Jail Officers were not aware of the order dated 13th May, 2024 till 25th May, 2024 is completely false. Now, the blame is shifted on the Section Officer for not opening the e-mail till 6th June, 2024 which was sent by the Jail Authorities on 25th May, 2024. It is not a coincidence that this date of 6th June, 2024 has been mentioned. The reason is that the Code of Conduct came to an end on 6th June, 2024 as noted in our order dated 20th August, 2024. As observed in our order dated 20th August, 2024, the file was kept

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pending till the Code of Conduct was over. The affidavits dated 14th August, 2024 and 25th August, 2024 lay credence to the fact that indeed the file was kept pending till the Code of Conduct was over.

7. We direct the Chief Secretary of the State of Uttar Pradesh to inquire into the entire episode and file his personal affidavit explaining the conduct of the State Government and its officers. The said affidavit shall be filed by 24th September, 2024, which will be dealt with by this Court on 27th September, 2024.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)