

25.07.2023
Sl. No.5
akd
[Adjourned]

C. R. M. (DB) 2716 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 04.07.2023 in connection with Baguihati Police Station Case No.154 of 2023 dated 24.03.2023 under Sections 363/365 of the Indian Penal Code and Sections 4/17 of the POCSO Act.

And

In Re: **Anil Sardar**

... .. Petitioner

Mr. Mazhar Hossain Chowdhury

... .. for the petitioner

Mr. Saswata Gopal Mukherjee .. Id. Public Prosecutor

Mr. Shiladitya Banerjee

... .. for the State

Pursuant to our earlier direction, Inspector-in-charge, Baguiati Police Station and the Investigating Officer of the case viz. Biswajit Das, Sub-Inspector of Police, Baguiati Police Station are personally present before this court. Their presence is noted.

In terms of our order dated 11.07.2023, the aforesaid police officers have submitted their explanation.

In the explanation it is stated that the victim went missing and a missing diary was registered. Under such circumstances, unintentionally her photograph came to be a part of the case diary which was produced in court.

In **Nipun Saxena and Anr. vs. Union of India and Ors.**¹ the Apex Court insisted the identity of the victim of sexual crime particularly a minor must be scrupulously protected. Investigating officers were directed to keep the documents disclosing the identity of the victim in a

¹ (2019) 2 SCC 703

sealed cover and ensure no publicity was given. The Court held as follows:-

“50.5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.”

The aforesaid directive was flagrantly violated and photograph of the victim was made a part of the case diary produced in the judicial proceeding.

Police officers are responsible public servants entrusted with the duty to investigate sensitive cases involving vulnerable child victims. Their lack of awareness with regard to the manner in which the identity of the victim is to be protected is appalling.

Still more unsettling is the arrest of the petitioner who brought the *lis* before us.

The police officers were cognizant of the statement of the victim recorded under Section 161 of the Code of Criminal Procedure which is exonerative in nature with regard to the petitioner. Still then, for reasons best known to them, the petitioner was arrested and remained in custody for a considerable period of time.

Power to arrest is an important tool in the course of investigation. It is a dangerous one too. It encroaches on the most precious right of an individual i.e. his/her personal liberty. The Apex Court in a series of cases² has emphasised that police must exercise their power to arrest with due care and circumspection.

We find a wanton disregard to such mandate. The police officers concerned appear to have flagrantly ignored the aforesaid

² Joginder Kumar vs. State of U.P. and Ors., (1994) 4 SCC 260; D.K. Basu vs. State of West Bengal, (1997) 1 SCC 416; Santender Kumar Antil vs. CBI and Anr., (2022) 10 SCC 51.

mandate of law in the investigation of the case and prima facie caused harm both to the victim by exposing her identity as well as to the petitioner by depriving him of the liberty though materials spoke otherwise. We are of the prima facie view that the police officers have derelicted in the discharge of their official duties during investigation of the case.

Accordingly, we direct the Commissioner of Police, Bidhannagar Police Commissionerate to suspend the police officers namely, Santanu Sarkar, Inspector-in-charge, Baguiati Police Station and the Investigating Officer of the case viz. Biswajit Das, Sub-Inspector of Police, Baguiati Police Station and initiate disciplinary proceedings against them for dereliction of duty during investigation. Necessary order in this regard be passed immediately.

Let the matter appear under the same heading on **22.08.2023**.

Report be filed on the adjourned day.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)