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Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 6153 of 2024

Applicant :- Mukesh Giri

Opposite Party :- State Of U.P.And 3 Others

Counsel for Applicant :- Sudhanshu Kumar,Swapnil
Kumar,Uttar Kumar Goswami,Vijay Pratap

Counsel for Opposite Party :- Deepak Rana,G.A.,Noor
Saba Begum

Hon'ble Vikram D. Chauhan,J.

1. In pursuance to the order dated 8.8.2024, the Commissioner of Police, Ghaziabad has filed his personal affidavit explaining as to why the previous order dated 5.7.2024 has not been complied with. The earlier affidavit was filed by Sri Rampal Singh, Sub-Inspector, Police Station Muradnagar. According to the Commissioner of Police, proceedings have been initiated against the aforesaid officer.

2. On 5.7.2024, a direction was issued to the State to file counter affidavit disclosing the evidence found during investigation against the applicant. The issue in the present case is a serious issue as the allegation against the applicant was that the applicant was involved in recording of video of females while they were bathing. The Commissioner of Police, Ghaziabad in his affidavit has stated that the allegations have been found to be true, although learned counsel for the applicant disputes the same and he submits that he will argue the case on merits at the appropriate stage.

3. Earlier, a counter affidavit dated 15.7.2024 was filed by the State which did not disclose any evidence or material particulars found during investigation against the accused–applicant even though this Court by order dated 5.7.2024 directed the filing of counter affidavit disclosing the evidence found during investigation against the applicant. A perusal of order dated 5.7.2024 would indicate that the counsel for informant had stated that video has been recovered during investigation with regard to the allegations against the applicant. It is very strange that the informant is having knowledge of the material found during investigation against

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the applicant however the counter affidavit dated 15.7.2024 is absolutely silent on the nature of material collected during investigation. A perusal of counter affidavit dated 15.7.2024 demonstrate that in paragraph 15 of the counter affidavit dated 15.7.2024 the reference to the order dated 5.7.2024 has been made. Paragraph 15 of the counter affidavit dated 15.7.2024 is quoted hereinbelow:

"15. That the contents of paragraph no.38 of the affidavit are not admitted, hence denied. The applicant is not the peace loving and law abiding citizen. If the applicants are granted bail in anticipatory, there is every chance of his absconding and tampering with the evidence. The applicant is not entitled for bail in anticipatory. It is further submitted that vide order dated 5.7.2024, this Hon'ble Court has been pleased to direct to disclose the evidence found during investigation against the applicant hence true copy of the letter dated 27.5.2024, whereby the National Commission for Women has come across a distressing media report captioned 'Illegal Structures Razed After CCTV Found In Women's Changing Rook at Chhota Haridwar, Mahant, Absconding. is being filed herewith and markes as ANNEXURE NO.CA.2 to this Counter Affidavit."

4. A perusal of the above mentioned paragraph 15 of counter affidavit dated 15.7.2024 would demonstrate that in pursuance to the order dated 5.7.2024 of this Court, the copy of the letter dated 27.5.2024 of the National Commission for Women has been annexed. It is not known as to how the communication dated 27.5.2024 of National Commission for Women is an evidence against the applicant accused and why the relevant evidence was suppressed by the State authorities at the time of filing of the counter affidavit dated 15.7.2024.

5. The counter affidavit dated 15.7.2024 seems to have been filed in a very casual manner ignoring the order dated 5.7.2024. The personal affidavit filed today by the Commissioner of Police except for holding that the proceedings against the erring official, nothing has been indicated with regard to how the communication of National commission of women is an evidence.

6. The affidavit filed today by Commissioner of Police, Ghaziabad has given a detailed account of how the investigation has been carried on. The earlier counter affidavit dated 15.7.2024 was filed by Sri Umesh Chandra Verma, Additional Government Advocate. The counter affidavit dated 15.7.2024 did not disclose what was the

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evidence against applicant, although today the counter affidavit has been filed by the Commissioner of Police disclosing various stages of investigation and what has been found during investigation. It is not known as to why previously the aforesaid facts have not been disclosed before the Court, despite a specific order.

7. This Court further finds that after the order passed by this Court inviting counter affidavit by disclosing evidence found against the applicant. The police prepares the instructions and the same is being sent through office of Director of Prosecution to the office of the Government Advocate. There are three levels of check to find out whether the instructions have been properly prepared or not. The first level is the police department itself. The second level is Director of Prosecution and the third level is the office of the Government Advocate. Neither the three levels have taken pain at the time of filing of previous counter affidavit to comply with the order of the Court despite the fact that there are serious allegation against the applicant and the matter was required to be taken up by the authorities concerned. The office of Director of Prosecution cannot act like a post office, they have to examine instructions to find out whether the necessary averments have been stated and evidence has been enclosed along with the affidavit as required. Even police department owes a duty to fairly disclose all the material while filing the affidavit. Such duty has not been discharged by the police department in the earlier counter affidavit.

8. Non disclosure of material particular and evidence from the court is an interference in the dispensation of justice. No Officer of the State can be permitted to file an affidavit by concealing material particulars and facts, which were relevant for adjudication of the dispute pending before this Court. More particularly, when the question of liberty of an individual is involved. The non-disclosure of material facts and evidence is indicative that the police department is either not interested in bringing home justice to the victim and accused. At this stage it is difficult to know what was the reason for not complying order of this Court while filing earlier counter affidavit. However, prima facie this Court is satisfied that by not disclosing the material particular and evidence fairly in the earlier counter affidavit by the police

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department and non-examination of the earlier counter affidavit by the office of Director of Prosecution and the office of the Government Advocate is indicative of the negligence or laches.

9. In view of the aforesaid, this Court is left with no other option to direct an inquiry to be set up. The inquiry would be conducted by an Officer not below the rank of Principal Secretary to be nominated by Chief Secretary of Uttar Pradesh. While holding the inquiry, the Inquiry Officer shall examine following facts:-

(I) Whether at the time of filing of previous counter affidavit dated 15.7.2024 by the State, the office of the Government Advocate and Director of prosecution, was sent with the details of the material particulars of evidence against the applicant- accused in compliance of the order dated 5.7.2024 of this Court.

- a. In the event the material particulars and evidence were sent by police department to the office of the Director of prosecution and the Government Advocate, then why the office of the Director of prosecution and Government Advocate has not disclosed the aforesaid material particulars of evidence in the counter affidavit dated 15.7.2024.
- b. In the event material particulars and evidence was not sent by the police department to the office of the Director of prosecution and the government advocate then why despite having knowledge of the order dated 5.7.2024, the police department has not sent such material particulars and evidence prior to filing of counter affidavit dated 15.7.2024.
- c. In the event material particulars and evidence was not sent by the police department to the office of the Director of prosecution and Government Advocate then whether any communication in writing was sent to the police department by office of Director of prosecution and the Government Advocate demanding the supply of the material particulars and evidence as directed by order dated 5.7.2024.
 - i. In event such communication in writing is being sent

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by the Director of prosecution and the office of the government advocate to the police department why such communication has not been acted upon by the police department prior to filing of the counter affidavit dated 15.7.2024.

ii. In the event no such communication was sent by the office of Director of Prosecution and the Office of Government Advocate, then why the communication was not sent for compliance of order dated 5.7.2024 to the police department (when instructions were received to file counter affidavit and no material particulars and evidence was send by police department) prior to filing of counter affidavit dated 15.7.2024.

iii. It shall also be examined as to whether the office of the Director of prosecution has examined in its internal noting as to whether the instructions send by the police department (prior to filing of counter affidavit dated 15.7.2024) contained all the evidence and material particulars as directed by order dated 5.7.2024.

(II) The aforesaid Inquiry Officer shall also examine as to the person who has drafted the counter affidavit dated 15.7.2024 and shall disclose the name of the person was drafted the counter affidavit dated 15.7.2024.

(III) The Inquiry Officer shall also examine as to person who had assigned the work of drafting the counter affidavit dated 15.7.2024 and whether the person assigning the work of drafting the counter affidavit has examined that all material particulars and evidence has been received from the police department.

(IV) The Inquiry Officer shall also examine as to the person who has typed the counter affidavit dated 15.7.2024 and whether the remuneration in respect of typing of the counter affidavit was paid from the State exchequer. It shall also be examined if the counter affidavit has been typed by person not engaged by the State then under what circumstances the counter affidavit has been typed by outsider and whether any permission was sought from the Government Advocate.

(V) A detailed enquiry shall be made by the Inquiry Officer indicating the negligence or lapses being made by the police

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department, office of director of prosecution and office of Government Advocate.

(VI) The State Government shall also on affidavit show the steps taken by the State for ensuring that no suppression of facts, particulars and evidence is made by any government department in future and that the office of the Government Advocate functions in professional manner.

(VII) The inquiry report shall be submitted in sealed cover before this Court on the next date.

10. The Commissioner of Police, Ghaziabad is hereby directed to complete the inquiry pending against the deponent of the earlier counter affidavit forthwith and submit an affidavit in this respect.

11. List on 12th September, 2024 in top ten cases.

12. This case shall be treated as part heard to this Bench.

Order Date :- 23.8.2024

Bhaskar