

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 17th February, 2023

Pronounced on: 2nd March, 2023

+ CRL.M.C. 962/2023 & CRL.M.A. 3666/2023. (stay)

CHANDRA SHEKHAR & ANR. Petitioners

Through: Mr. Vikas Arora, Ms. Radhika
Arora & Mr. Piyush Kumar,
Advs. with petitioners in person

versus

STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. Sanjeev Bhandari, ASC for
the State with Ms. Richa Dhawan,
APP for the State with Mr. Kunal
Mittal and Mr. Saurabh Tanwar,
Advs.

**CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL**

JUDGMENT

1. The petitioner No.1 is presently serving as SHO, PS Defence Colony and petitioner No.2 (Raj Kumar) is presently serving as HC, PS Defence Colony. This petition has been filed for expunging remarks made against the petitioners in orders dated 21st January, 2023 and 31st January, 2023 passed in Bail Appl. No. 202/2023 titled as *State v. Vikas Gulati @ Vicky* by Sh. Sonu Agnihotri, Additional Sessions Judge, South East, Saket Courts, New Delhi in proceedings arising out of FIR No.221/2022, PS Defence Colony. Petitioners have further prayed for

setting aside the directions issued by the Ld. ASJ to the Commissioner of Police to get an inquiry conducted through Vigilance Department as also to the DCP, South to get an inquiry conducted against the petitioners.

2. The background facts are that the said FIR was registered under Sections 380/411/34 IPC for an alleged theft of sarees worth Rs. 15 lacs from the shop of the complainant at Defence Colony. The accused were women whose anticipatory bail applications were listed on 2nd January, 2023. Petitioner No.2, being the IO of the case, opposed the bail applications. The Ld. ASJ after hearing arguments was pleased to dismiss the bail applications. During the course of early investigation, the petitioner No.2 had issued notice under Section 41A Cr.P.C. to accused Ms. Raj Bala and Ms. Sunita on 4th January, 2023 pursuant to which they appeared on 5th January, 2023 and cooperated in the investigation and consequently, there was no requirement to arrest the accused. Thereafter another accused person namely Vikas Gulati @ Vicky filed his anticipatory bail application which was opposed by the IO and was accordingly dismissed. In fact, the said Vikas Gulati @ Vicky had also preferred an anticipatory bail application before this Court which is listed on 13th March, 2023.

3. However, amidst these proceedings, while passing orders on 21st January, 2023 in the anticipatory bail application moved on behalf of Vikas Gulati @ Vicky, the Ld. ASJ proceeds to examine further issues relating to the investigation and notes in the order that a perusal of the case diary shows that there is no entry between 23rd December, 2022 and 4th January, 2023 and the IO had omitted to write the case diary entry for 2nd January, 2023 when the anticipatory bail applications of co-accused Raj Bala and Sunita were dismissed. The IO wrote on 4th January, 2023 regarding the issuance of section 41A Cr.P.C. notices to the said

accused. Noting this fact, the Ld. ASJ opines that there was no need for the IO to oppose the anticipatory bail applications of the said accused if their custody was not required and having opposed the said applications and then making them join the investigation by serving them notices under Section 41A Cr.P.C., indicates there was “*something fishy on part of police*”. The Ld. ASJ then proceeds to dismiss the anticipatory bail application of Vikas Gulati @ Vicky but observes that “*from conduct of IO, it appears that he is not carrying out investigation in a proper manner and there is something more written on wall than visible*”.

4. On yet another issue relating to updating status of cases against accused, the Ld. ASJ notes that the SCRB report was not being updated despite his earlier directions about 1½ years back in another FIR. Accordingly, the Ld. ASJ issued show cause notices to the petitioner Nos. 1 and 2 under Section 177 IPC for furnishing false information and sent a copy of the order to the DCP, South to enquire about the role of the petitioners in investigation of the case in view of the observations of the court as also a direction to file Action Taken Report against these petitioners before the court. Additionally, an explanation was sought from the Commissioner of Police, Delhi as to why the SCRB record is not being updated and the order was sent to the Commissioner of Police for information and compliance.

5. On the subsequent date of 31st January, 2023 in continued proceedings in anticipatory bail application of Vikas Gulati @ Vicky, the Ld. ASJ notes that the report of the DCP, South has been filed and it was perused. The report stated that the IO had no knowledge about the exact involvement of the accused Raj Bala and Sunita, therefore, he had no option except to oppose the applications for anticipatory bail which were in any way dismissed by the Ld. ASJ. However, since the two co-

accused joined the investigation and were interrogated at length and disclosed that Vikas Gulati was the main conspirator and was in possession of the stolen property, no further steps were taken at that stage. As regards the omission to write diary entry for 2nd January, 2023, the DCP noted that it was a supervisory lapse and show-cause notice for censure had been issued to them. The Ld. ASJ however reiterated his observations made in order dated 21st January, 2023 and expressed his displeasure that the IO instead of arresting the accused ladies, had made them join investigation by serving them notices under Section 41A Cr.P.C. and stated that he should have not then opposed the anticipatory bail applications and this according to the Ld. ASJ was '*fishy*'.

6. Further, the Ld. ASJ elaborated on the report of the DCP, South by stating that the DCP appears to have "*brushed the matter under the carpet*" by merely noting the omission for not filing the case diary on one day and issuing a show cause notice for censure. As per the Ld. ASJ, the report of DCP, South had not dealt with his observation that something was '*fishy*'. Accordingly, he directed a copy of order to be sent to Commissioner of Police, Delhi with a direction to get vigilance enquiry conducted into the role of petitioners as also to get inquiry conducted from some DCP level official outside the jurisdiction of Police District South.

7. As regards the show cause notices under Section 177 IPC for which replies have been filed by the petitioners, the Ld. ASJ accepted their response that they have never intended to furnish false information but it arose due to incorrect data maintained by other police stations over which they have no control. Further, the Ld. ASJ took objection to the fact that the explanation sought from the Commissioner of Police had been submitted under the signatures of DCP, South on behalf of the

Commissioner of Police. For lack of updation of record by various police stations, the Ld. ASJ then further observed that it was a failure on part of the SHO, PS Vivek Vihar, SHO, PS Motin Nagar, SHO, PS Farsh Bazar, SHO, PS Tilak Nagar and accordingly report be given to DCP, West and DCP, Shahdara for taking appropriate disciplinary actions and further ATR was requisitioned from the Commissioner of Police, Delhi for 20th February, 2023.

8. In respect of the above sequence of events, the Ld. ASC submitted that as regards the various aspects for which the Ld. ASJ expressed his disapproval and passed a host of directions, the following ought to be appreciated:

(i) As regards the omission to file the case diary by the IO for one particular day, it is submitted that the investigation is still pending and the case diaries are updated from time to time and the only omission was to note the order of Ld. ASJ dated 2nd January, 2023 which could have been rectified subsequently. No real prejudice was caused to anybody in this regard. Considering that the proceedings were at the stage of seeking anticipatory bail, at which stage there is no practical need for calling the case diary and that the case diary is typically sent for, as per provisions of section 172 Cr.P.C., at the stage of any inquiry or trial. In any event, at best it was just a clerical omission and it was not an omission to report the investigation aspect but a court proceeding.

(ii) As regards the issuance of Section 41A Cr.P.C. notice by the IO despite dismissal of anticipatory bail application by the Ld. ASJ, the Ld. ASC adverted to the decision of Hon'ble Supreme Court in *M. C. Abraham & Anr. v. State of*

Maharashtra, (2003) 2 SCC 649 where the Apex Court in para 14 and 15 has stated in relation to Section 41 Cr.P.C. (which was a precursor to Section 41A Cr.P.C. introduced by an amendment in 2008) that in similar circumstances where anticipatory bails had been rejected by the High Court and the accused had not been arrested, it was to be noted that the IO did not consider it necessary, having regard to all the facts and circumstances, to arrest the accused. There was no justification for the High Court to direct the State to arrest the accused since it would amount to unjustified interference in investigation of the case. The Apex Court noted “*The mere fact that the bail applications of some of the appellants had been rejected is no ground for directing their immediate arrest. In the very nature of things, a person may move the court on mere apprehension that he may be arrested. The court may or may not grant anticipatory bail depending upon the facts and circumstances of the case and the material placed before the court. There may, however, be cases where the application for grant of anticipatory bail may be rejected and ultimately, after investigation, the said person may not be put up for trial as no material is disclosed against him in the course of investigation. The High Court proceeded on the assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. This assumption, to our mind, is erroneous. A person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the investigating officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed in the course of investigation and other relevant considerations.*” Relying on

these observations by the Hon'ble Supreme Court, the Ld. ASC stated that mere opposition to the anticipatory bail applications of Raj Bala and Sunita, did not clothe the IO with a mandate that he should compulsorily arrest them. In fact, the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 has specifically mandated that the process of issuing Section 41A Cr.P.C. notice must be undertaken.

(iii) Having regard to the directions to DCP, South to enquire into roles of petitioners, was also an interference with the process of investigation which ought not to be done by the Court, as per settled law of the Hon'ble Supreme Court. The DCP, South had submitted a report and on 31st January, 2023, it was noted by the Ld. ASJ that as per the DCP, South show-cause notices had in fact been issued to the petitioners' supervisory dereliction not to fill up the case diary, however, despite the same Ld. ASJ noted that the DCP, South had "*brushed the matter under the carpet*" and consequently ordered an enquiry from a DCP level officer outside jurisdiction of South District. It was submitted that there was no basis for arriving at such a conclusion by the Ld. ASJ.

(iv) As regards the direction to the Commissioner of Police to explain non-updation of SCRBs, it was submitted by the Ld. ASC that it was inappropriate for the Ld. ASJ to deal with the monitoring of larger issues while hearing a bail application. Moreover, having already dismissed the bail application on 21st January, 2023, the Ld. ASJ had no jurisdiction to continue proceedings of 21st January, 2023. Further, no opportunity was given to the petitioners to present their point of view. However, replies had been filed by both the petitioners in response to the issues raised by the Ld. ASJ.

9 In support of his submissions, Ld. ASC relied upon the following case laws:

a. *State of NCT of Delhi v. Anwar Khan*, CrI.M.C. 2784/2021 decision dated 10th November, 2021 where a Coordinate Bench of this Court had noted in para 24, after the Ld. ASJ allowed the application seeking anticipatory bail, it became *functus officio* and as such could not have continued with the matter, more particularly on the aspects of investigation in the case. Such an observation was passed relying on the decision of *Nathu Singh v. State of U.P.*, (2021) 6 SCC 64 of the Hon'ble Supreme Court. In the said matter, this Court stated that it was clearly beyond the scope of ASJ, while adjudicating a petition under Section 438 Cr.P.C. to issue bailable warrants against Additional DCP (South), DCP (South) and Joint CP and accordingly had quashed the said directions.

b. In *Rakesh Chand v. State of NCT of Delhi*, W.P. CrI. 207/2015, this Court held that “*While dealing with the task of administering justice, a Judge, no doubt has to be acting judicially and giving expression to his views but he ought to be circumspect while commenting on the conduct of some. The line of discretion is not to be overstepped.*” It further noted that “*A Judge ought to know that any statement against any authority of the Government or any organ of the Government or any person incharge of investigation or discharging executive functions can lacerate, slash and mutilate his reputation into tatters and cause irreparable harm. It may prejudicially affect the career of such persons.*” This Court had in this decision relied on an observation by the Hon'ble Supreme Court of the United States

in *Stump v. Sparkman*, 435 US 349, 1978 stating “A Judge is not free, like a loose cannon to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity”. In this matter as well, police officials had sought deletion of observations as no hearing or opportunity was given to explain their conduct. Moreover, the Court noted that there could be a lapse on the part of the investigating officer, but even then before any action is taken, legal or departmental, they should be given notice and should be heard. It was further stated that even if there was a lapse on the part of the petitioners as police officers, the Trial Court could have recorded such lapse and indicated that in future such lapse should not occur, however, directing the administrative authorities/superior police authorities to take legal/departmental action against the petitioners only meant that “the petitioners were also convicted along with the accused persons in the present case” and for proper sentencing, their cases were sent to the superior police authorities. This Court in that matter had also expunged the remarks from the impugned judgment.

c. In *Ajit Kumar v. State (NCT of Delhi)*, 2022 SCC OnLine Del 3945 this Court while dealing with a prayer for deletion of remarks made against the SHO and directions to conduct an enquiry against him, noted that “...Use of denigrating remarks against anyone, especially against police officials impeaching their credibility and questioning their sense of dedication towards duty, is not the best course adopted by a judicial officer, that too when the same is not required for the adjudication of the case before the Court. Such criticism may have a devastating

effect on the professional career of an officer...” and further that “...Though the police officers are duty bound to discharge their responsibilities with utmost conviction, the practical difficulties which are faced by them cannot be overlooked and disregarded by the Courts...”

d. In *State v. Yogender Singh*, 2015 SCC OnLine Del 14203 while dealing with a bail application, Ld. ASJ had commented on the conduct of the investigating agency, the SHO and the DCP as well. Also a copy of order had been sent to the Commissioner of Police to take action against the erring police officials and to submit the Action Taken Report. In this regard this Court stated as under:

“15. While administering justice, a Judge is expected to be acting judicially without being deterred by any consideration. While doing so, he has the liberty of expressing his views about the conduct of the investigating agency or other organs of the Government but has to be careful about not overstepping its jurisdiction. An order or a judgment is a privileged document and a Judge has always to remind himself that the immunity which he enjoys in writing an order or a judgment carries with it the duty of circumspection.

16. If the learned Addl. Sessions Judge was not happy with the way in which the investigation was being carried out, it was enough to record his displeasure. That has been done aptly by the learned Addl. Sessions Judge. What is not approved of is his direction to send

his order to the Commissioner of Police for taking action against the erring police officials and submission of action taken report to him. This cannot be taken kindly to on two scores. By saying so, the learned Judge has pre-judged the action/inaction of the investigating agency and other police officers without affording any opportunity to explain the circumstances for delayed lodging of the first information report; and the Court, by seeking action taken report has in a way, encroached upon the administrative functions of the police administration and thereby has begun monitoring not the investigation of the case but the process of taking disciplinary action against the police officials. The Commissioner of Police, is left with no choice, once a Court of law holds that law has been flouted and, therefore, action be taken against the concerned persons. The disciplinary enquiry, therefore, would only be on paper when the offence is held by the court to have been committed.”

e. In ***Dilip Kumar Deka (Dr) v. State of Assam***, (1996) 6 SCC 234, the Hon’ble Supreme Court noted that the nature of remarks made by the Ld. Judge cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career and were made without giving them an opportunity of being heard which was against the principle of natural justice. The appeal before the Hon’ble Supreme Court was also for expunging remarks made by the Ld. Judge against certain doctors

while disposing of a revision petition in a murder case. The Hon'ble Supreme Court noted in para 10 as under

“10. If the learned Judge's reasoning to make the impugned remarks is taken to its logical conclusion, it would mean that whenever a superior Court sets aside a finding of a lower Court, which is patently wrong, the former gets a charter to make vituperative remarks against the latter simply because it had recorded such a finding. Before drawing any conclusion that an inferior body or Court has recorded a wrong finding with an ulterior motive or for an oblique purpose the superior body or Court, as the case may be, must demonstrate that there are materials - other than the patently wrong finding which impels it to so conclude. Else, the conclusion would be presumptuous and justice and fair play would be casualties.” Also *“In keeping with the above observations, we feel, the learned Judge ought to have used temperate language and moderate expressions while criticising the appellants, for judicious restraint in such matters only lends more dignity to the high office the learned Judge holds and imparts greater respect for the judiciary. For the foregoing discussion we allow this appeal and quash the earlier quoted disparaging remarks made against the appellants.”*

f. The Ld. ASC brought attention to decision of this Court in the ***Court on its own Motion v. CBI***, (2004) 72 DRJ 629 decided on 28th January, 2004 where it was stated that from time to time

despite law laid down for the guidance and compliance of the subordinate courts, it was observed that a large number of orders were being passed by the subordinate courts in complete violation of the law laid down by the Hon'ble Supreme Court and this Court in many cases.

10 Learned counsel for the petitioner has also adverted to the decision in *Ajit Kumar v. State* (*supra*) pointing out that the impugned order in that decision as well was passed by Ld. ASJ Sonu Agnihotri in “*Amitabh Saniyal v. Siddharth Sharma*” and has placed records in that regard to substantiate the same.

11 Having heard the contentions on behalf of the counsel for the petitioner as well as the Ld. ASC and perusing the records before the Court, it is quite evident that the Ld. ASJ has excessively exaggerated the issues relating to the conduct of the petitioners (the SHO and the IO) in relation to investigation and keeping of records. *Firstly*, a mere omission of noting a court order in case diary on a particular day while investigation is still undergoing and particularly which has no implication or prejudice to the proceedings, cannot be amplified beyond proportion, as has been done by the Ld. ASJ. This Court also had the occasion to see the case diary in order to examine the context in which such remarks were made and considering that these entries are computerized and not in hand, not having noted that the anticipatory bail application was dismissed on 2nd January, 2023, was at best mere clerical omission. *Secondly*, the opposition of the IO to an anticipatory bail application is normal, obvious and expected since that is the role of the State and the investigating agency. Any concession or consent to an anticipatory bail application by an IO would in fact have amounted to it being ‘*fishy*’ but certainly not an opposition to it. The investigation was

still at its nascent stage, the issue relating to the act of stealing sarees from a shop done at the behest of the mastermind Vikas Gulati @ Vicky, who was received of the stolen goods, therefore, it was natural for the IO to oppose the same. *Thirdly*, dismissal of anticipatory bail application was a result of judicial function performed by the Ld. ASJ and it would have no implication on what any of the parties had contended in support of their respective stands. Once the judicial order was passed, it was clearly open to the IO to issue notices under Section 41A Cr.P.C. to allow the accused to join the investigation. These are normal, regular and routine practices where Section 41A Cr.P.C. notices are issued, allowing the investigating agency to summon the accused without arresting them and in fact a process mandated by the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar* (*supra*). As held in *MC Abraham* (*supra*) there was no automatic mandate on the IO to arrest the accused once their anticipatory bail application was rejected. That, in law, can never be a consequence since it is the IO's prerogative to seek custodial interrogation or otherwise collect pieces of evidence without such a custodial process. Ld. ASJ drawing an unnecessary *sequitur* in this regard reflecting on the conduct of the IO/SHO is therefore, completely out of context and inappropriate. *Fourthly*, pursuant to directions of the Ld. ASJ, the DCP (South) had in fact submitted a report which was also noted in the order dated 31st January, 2023. When the report clearly explained circumstances and addressed the concern of the conduct of the petitioners, as also mentioned that show cause notices were issued to them regarding case diary omission, the issue ought to have rested there. It was not within the mandate or scope of the Ld. ASJ at that stage to have chosen to disbelieve the report of the DCP, South merely on the basis that his apprehension was not addressed. The two concerns of the Ld. ASJ as regards the case diary omission and the

issuance of Section 41A Cr.P.C. notice had been adequately dealt with in the report of the DCP and at best, an internal process was being initiated for allowing the petitioners to explain the omission of the case diary entry (even though, as noted by this Court, it was at best a clerical mistake having no immediate consequence whatsoever). The DCP's report in no manner whatsoever "*brushes the matter under the carpet*" in fact, objectively deals with concerns of the Ld. ASJ and offers a proper explanation as well as informs about the administrative steps which were being taken. *Fifthly*, having wrongly and unnecessarily disbelieved the report of the DCP, the Ld. ASJ then overreaches to order yet another enquiry from a DCP outside jurisdiction of Police District South. This direction was completely exaggerated and wholly unnecessary and merely impinges on the administrative time of the police authorities for something which was already addressed and possibly, at some level, quite trivial. *Lastly*, the direction to use the platform of bail application, even though it had been disposed of on a previous date i.e., 21st January 2023, to further seek an explanation from Commissioner of Police regarding SCRB updations and also directing action to be taken against SHOs of at least 4 other police stations, and noting that it was a '*misconduct and disciplinary action must be taken*', is not only disproportionate, but is also a serious overreach into administrative functions of police authorities.

12 The various decisions adverted to above are categorical in their disapproval of this overreach by judicial officers beyond their judicial functions. No purpose would be served in rephrasing or restating the statements already been made by the Hon'ble Supreme Court or this Court in decisions noted above. A referral to those decisions (including the extracts, *supra*) makes this incontrovertibly and categorically clear.

13 Not only are such remarks unnecessary but also could have serious implications on the careers of public servants, particularly for what seems in the facts and circumstances as perfunctory issues which have no huge negative impact on the actual administration of the criminal justice process. As discussed above, the Ld. ASJ ought not to have embarked on an inexorable quest when his original concern had been suitably addressed. The remarks and the phraseology used by the Ld. ASJ is summary in nature, penal in its scope, stigmatizing in its tone and tenor and as already motioned, beyond the ken of expected judicial conduct. In these facts and circumstances it is directed that all remarks against the petitioners in orders dated 21st January, 2023 and 31st January, 2023 passed by Ld., Additional Sessions Judge, South East, Saket Courts, New Delhi in Bail Appl. No. 202/2023 shall be expunged and all directions for conducting enquiries and explanations by the DCP or the Commissioner of Police shall be recalled and stand deleted from the said orders.

14 It is noted in particular that similar remarks against the police by the same presiding officer have been deleted and expunged by this Court in *Ajit Kumar. v. State of NCT of Delhi* (*supra*). It is expected therefore that the Ld. ASJ would be circumspect and exercise care and caution in future before embarking on these judicial misadventures.

15 Petition is disposed of. Pending applications, if any, are disposed of as infructuous.

16 Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 2, 2023/sm