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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 407/2021 & CRL.M.A. 2944/2021 & 8521/2021

SAURABH AGARWAL

..... Petitioner

Through: Mr.Dibyanshu Pandey & Ms.Soumya
Kumar, Advs.

versus

STATE OF GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms.Nandita Rao, ASC (Criminal) for
State.

Ms. Nidhi Raman, Central
Government Standing Counsel with
Mr. Zubin Singh, Adv. For R-2

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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06.05.2022

1. This petition has been filed by the petitioner praying for the following reliefs:-

- “i. To declare to the effect that Guideline 7. a. of the Standing Order No. 248A of Respondent No. 3, insofar as it mandates inclusion of Advocates’ details in Criminal Dossier of an accused as illegal, arbitrary and violative of Articles 14 , Article 21 and Article 22 of the Constitution of India.*
- ii. To declare to the effect that Para 3 of the Standing Order No. 248A of Respondent No. 3, insofar as it mandates preparation of personal Dossier an ordinary accused, as illegal, arbitrary and violative of Article 14 and Article 21 of the Constitution of India.*
- iii. To issue a writ in the nature of mandamus*

directing the Respondent No. 2 to obtain and supply the last six months mobile phone Call Detail Record (CDR) of the mobile numbers 9811480989, 7827666815, 9711158424, 9996659570, 8076304709, 9650347997, 9310167506 and CDR of all other unknown policemen who were on duty between 02.12.2020 – 06.12.2020 at P.S. Samaypur Badli to the Petitioner.

- iv. To issue writ in the nature of mandamus directing the Respondent No. 2 to supply the copy of CCTV recordings of all the CCTV cameras of P.S. Samaypur Badli to the Petitioner for the period 01.11.2020 – 20.01.2020*
- v. To issue writ in the nature of mandamus directing the Respondent No. 2 to supply the copy of DVR hard disc seized on 03.12.2020 from the Petitioner's Shop located at Ghaziabad.*
- vi. To issue writ in the nature of mandamus directing the Respondent No. 3 to register FIR against the offenders.*
- vii. To award a compensation of rupees ten crore to the Petitioner for violation of various fundamental rights.”*

2. It is the case of the petitioner that in the night of 03.12.2020, at around 8 PM, he was forcibly picked up from Ghaziabad, Uttar Pradesh by around eight people, who were in civil dress, and taken to P.S. Samaypur Badli, Delhi, in private vehicles. It later became known that these persons were police officers of Delhi Police, including S.I. Sandeep Sandhu and S.I. Pawan Kumar Kaul. They snatched the mobile phone of the petitioner, and he was neither permitted to inform his family or any other known person about his arrest nor was he allowed to avail any legal remedy. Around midnight, he was then taken back to Ghaziabad where the shop of the petitioner located at Krishi Utpadan Mandi Samiti, Govindpuram,

Ghaziabad was searched by the policemen in the presence of the petitioner's family and two members of one Abhay Goel's family, who is the complainant in FIR No. 767/2020; P.S. Samaypur Badli. The petitioner asserts that no incriminating material was found in course of the said search.

3. The petitioner was thereafter again brought back to P.S. Samaypur Badli, where he was asked to pay huge amount to get released and was informed that some FIR of theft has been registered against him. As the petitioner refused to pay any money, S.I. Sandeep Sandhu and some other policemen resorted to violence against the petitioner. On 04.12.2020, one Mr.Prateek Goel and Mr.Tushar Goyal demanded Rs. 5,00,000 /- (Rupees Five Lakh only) to be paid by the petitioner or else he shall be sent to jail. The same demand was reiterated by S.I. Sandeep Sandhu and S.I. Pawan Kumar Kaul on the night of 04.12.2020. The petitioner was mercilessly beaten, tortured and his human dignity was trampled. It was at around 2:30 PM on 05.12.2020 that the petitioner was taken for a medical examination to Dr. Baba Saheb Ambedkar Hospital, Rohini; and thereafter, to P.S. Kavi Nagar, Ghaziabad, whereafter fake recovery was shown to have been made from the shop of the petitioner.

4. The petitioner was thereafter brought back to P.S. Samaypur Badli where he was forced to sign certain papers, which he signed without perusing the same. He was later produced before the Magistrate, with the police officers not permitting the petitioner to be represented through an advocate to avail his legal remedy. In fact, instead of producing the petitioner before the nearest Magistrate, he was taken to some locality of Sadar Bazar in a private vehicle.

5. Though the petitioner was remanded to judicial custody by the learned

Metropolitan Magistrate, he was again taken back to the Police Station, where again, he was physically and verbally abused. He was finally sent to the Tihar Central Jail from P.S. Samaypur Badli only around 11:30 PM on 05.12.2020.

6. On 09.12.2020, succumbing to the pressure of the police officers, Rs. 5,00,000 /- was paid by the family and friends of the petitioner.

7. The petitioner further asserts that advocates were reluctant to render legal help to him because of the Impugned Standing Order No. 248A of the Delhi Police, which required details of the advocate to be also included in the Criminal Dossier. In this background, the petitioner has challenged the Standing Order and made the prayers reproduced herein above.

8. This Court, vide its order dated 27.07.2021, had directed the respondent no. 1 to file a detailed Status Report. Pursuant thereto, a Status Report dated 24.03.2021 has been filed by the respondent no. 1. In the Status Report it has been mentioned that on 14.11.2020, a PCR call vide DD No. 34-A was received at P.S. Samaypur Badli, reporting theft in a godown at Village Siraspur, Delhi. Around 500 bags weighing 50kg each of pulses were found stolen from the godown. During the course of investigation, the secret informer gave the details of the suspects who purchased the stolen pulses. During the course of further investigation, the petitioner was served notice under Section 41A of the Code of Criminal Procedure, 1973 (in short, 'CrPC') dated 03.12.2020 for joining the investigation on 04.12.2020 at 10 AM. The petitioner joined the investigation on 04.12.2020 at around 11 AM. During the investigation, he admitted purchasing pulses from one Shantanu Singhal for Rs. 6,00,000/- (Rupees Six Lakh Only). The petitioner was asked to produce bills or invoices of the said transaction, but he failed to do

so. After the interrogation, he was allowed to leave at around 5 PM, with a direction to rejoin the investigation again at around 7 PM. He rejoined at around 10 PM. The role of the petitioner was disclosed by an earlier-arrested accused person and the petitioner failed to provide any bills or invoices regarding purchase of pulses. He was, therefore, arrested on 05.12.2020 at about 2:30 PM. During further investigation, seven bags of stolen pulses were recovered from his shop at Ghaziabad. He was medically examined at around 1:39 PM at Dr. Baba Saheb Ambedkar Hospital, Rohini and thereafter, produced before the learned Metropolitan Magistrate. He was remanded to judicial custody on 05.12.2020.

9. As far as the Criminal Dossier is concerned, the respondent no. 1 asserts that the same is used to prepare a database of persons arrested in relation to the specified offences, which helps in monitoring and prevention of crimes. The learned counsel appearing for the respondent no. 1 further submits that the said Criminal Dossier is not available in public domain and is used, and is accessible only to specified officers, who have been provided passwords to access the same.

10. We have considered the submissions made. From the above narration of facts, it is apparent that there is a highly contentious dispute on facts. While the petitioner has asserted that he had been illegally detained and tortured, the respondent no. 1 asserts that due process was followed in his arrest. The fact remains that the petitioner was produced before the Court of the learned Metropolitan Magistrate on 05.12.2020, whereafter he was remanded to judicial custody. The petitioner has not shown before us any complaint being made to the learned Metropolitan Magistrate on his production, or immediately thereafter. The respondent has further asserted

that the petitioner has been accused of being in possession of stolen bags of pulses.

11. In view of the above assertions, we are of the opinion that no direction can be issued in the present proceedings under Article 226 of the Constitution of India, as far as the investigation of criminal trial against the petitioner, or registration of case against the police officers is concerned. The petitioner, however, is always at liberty to initiate a proceeding in accordance with law, for initiating criminal process.

12. As far as the Standing Order No. 248A of the Delhi Police is concerned, again we are of the opinion that no infirmity can be found in the same. The said Standing Order, so far is relevant, reads as follows:

“Dossiers of criminals are an important tool of policing. Delhi Police has already implemented a modern, computerised, web-based system of maintaining dossiers of criminals. This standing order lays down procedure for the preparation, maintenance and upkeep of dossiers of criminals in the State Crime Records Bureau and Police Stations.

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Basic Information required for Dossier:

a. Criminal Details: Investigating Officer must clearly mention full description of the Criminal, Modus Operandi used, Detail about the Relatives, Friends, Advocates, Habit, Associates, previous involvements and detailed criminal history etc. The interrogation report of the Criminal, which contains valuable information, may be appended with the dossier.”

13. The purpose of the Criminal Dossier is merely to record the particulars of the accused, including the name of the advocate who may be

representing such an accused. Merely for this reason alone, it cannot not be said that the Standing Order suffers from any infirmity or violates any Fundamental Rights of the accused, as enshrined in the Constitution of India. The said information is not placed in public domain. It is confidential. The investigating authorities are entitled to maintain a database for their own use, of the accused, if they meet the requirements of the aforesaid circular. The mere inclusion of the name and particulars of the advocate would not deter the advocate from representing the accused, as that fact is there for everyone to notice. It is well known that litigants, including those accused of commission of a crime, engage the same counsel often. There are also situations, where it becomes difficult to find and serve the accused, if he has not been taken into custody, or is released on bail. Information about who is the advocate of such an accused, may come in handy to contact and locate the accused. Merely because the particulars of the advocate may be entered into the confidential record, it does not follow that such an advocate would be hounded or put under surveillance. In any event, there are sufficient safeguards in the law in this regard.

14. In view of the above, we find no merit in the present petition, and the same is dismissed. There shall be no order as to costs.

VIPIN SANGHI, ACJ

NAVIN CHAWLA, J

MAY 6, 2022/rv/AB