

\$~43

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(CRL) 1896/2022 & CRL.M.A.16448/2022**

BALBIR SINGH INSPECTOR ..... Petitioner

Through: Mr.Ramesh Gupta, Sr. Advocate with  
Mr.Rajinder Singh, Mr.Moinuddin  
Khan, Mr.Piyush Gupta, Mr.Divyansh  
Singh, Ms.Himanshi Batheja and  
Mr.Aarnav, Advocates with  
petitioner-in-person.

versus

STATE OF NCT OF DELHI & ANR. .... Respondents

Through: Ms.Nandita Rao, ASC with Mr.Amit  
Peswani, Advocate for the State with  
Inspector Manu Dev, PS: Kalkaji.

**CORAM:**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**ORDER**

% **23.08.2022**

**CRL.M.A. 16449/2022**

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

**W.P.(CRL) 1896/2022 & CRL.M.A.16448/2022**

1. Petition has been preferred on behalf of the petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C. with the following prayers:

*“A. Kindly allow the present petition and strictures/observations or remarks may be expunged or deleted as directed in the impugned order dated 20.08.2022 passed by Shri Gaurav Rao Ld. ASJ-01/Special Court (POCSO) South-East District, Saket Courts, New Delhi in bail application bearing no.2531/2022 titled as State versus Rakesh Verma arising*

*out of FIR No. 316/2017 under Sections 363/376 IPC and Section 6 of POCSO Act P.S. Kalkaji;*

*B. Issue a writ, order, or direction in the nature of Certiorari quashing/setting aside the impugned order dated 20.08.2022 passed by the Ld. ASJ.”*

2. Issue notice. Learned ASC for the State appears on advance notice served upon the State and accepts notice.
3. Status report/reply be filed through DCP concerned within four weeks with an advance copy to the learned counsel for the petitioner.
4. In order to appreciate the contentions raised by learned counsel for the petitioner for stay of impugned order passed by the learned Trial Court, the observations made in order dated 20.08.2022 may be reproduced for reference:

*“No reply has been filed by the IO/SHO. Neither the victim has been produced. In fact no body has appeared on behalf of SHO PS Kalkaji. It is already 10.28 am. Considering the numerous orders passed by this court in the last almost one month, lastly orders dated 18.08.2022 passed in case FIR no. 565/16 PS Kalkaji, reflecting the conduct of SHO PS Kalkaji and absolute failure on his part to improve his conduct, repeated non complying with the orders of the court, non appearance in the court, no filing of the reply, **it is a fit case where SHO PS Kalkaji shall be suspended immediately by the Commissioner of Police, Delhi and strict disciplinary action be taken against him.** Let copy of present order be sent to the office of Commissioner of Police, Delhi in this regard and report be called from his office within 3 days from today.*

*Relist the bail application now on 27.08.2022.*

(.....)  
ASJ-I (POCSO), South East,  
Saket Courts, New Delhi/20.08.2022

**10.35 a.m.**

*At this stage, SI Roshan Lal has appeared on behalf of the SHO PS Kalkaji. He has filed reply to the bail application however the victim has not been produced. In fact though he is filing the reply however he has stated that he was not provided with the copy of bail application. As regards non production of victim is concerned, it is stated that victim has changed her address and hence she could not be contacted. It is to be seen that notice of bail application was issued on 02.08.2022 and today is 20.08.2022, SHO and IO had almost 3 weeks time to trace the victim and produce her in the court as per mandate of Hon'ble High Court of Delhi but no sincere efforts have been made in this regard. Only lame excuses are being made which is repeatedly wasting the time of the Court. The SHO and IO are repeatedly failing to file reply to the bail applications, the IOs are not appearing to seek remand of the accused persons, victim are not being produced, no replies are being filed in interim compensation applications. The SHO is flouting of the order of the court with impunity and there is no change in his conduct. Same cannot be absolutely tolerated. Victim be produced now on date already fixed i.e. 27.08.2022. Copy of order be sent to the Commissioner of Police, Delhi.*

(.....)

*ASJ-I (POCSO), South East,  
Saket Courts, New Delhi/20.08.2022”*

5. Learned counsel for the petitioner while praying for the stay of the impugned order dated 20.08.2022, submits that learned ASJ acted beyond the scope of his powers and jurisdiction and also there has been a gross violation of principles of natural justice as neither any opportunity was given to explain nor any show-cause notice was served upon the SHO. It is also urged that any directions for suspending the petitioner could not have been passed since the

same is within the domain of the competent disciplinary authority and punishment could not have been recommended without giving any hearing to the petitioner. The direction issued for ‘suspending the petitioner’ is stated to be untenable and unsustainable in law.

On merits, it is submitted that a bare perusal of order would indicate that the orders were passed in the early morning hours at about 10.28AM while the IO had appeared at about 10:35AM. It is urged that no adverse orders should have been passed in the earlier hours. It is further submitted that the proceedings in the aforesaid case were pending since the year 2017 after filing of chargesheet and the petitioner was posted as SHO in November, 2021. It is further submitted that the victim could not be contacted and produced for evidence since she had changed her address. A detailed status report is stated to have been filed on behalf of Investigating Officer before the learned Trial Court on the same day at 10:35AM which had been prepared after going through the relevant facts and making efforts to produce the prosecutrix.

The petitioner is also stated to be in public service for 25 years with unblemished record.

6. Learned ASC for the State seeks time to file status report/reply but on merits, it has been pointed out that the status report appears to have been duly filed for consideration of the learned Trial Court at 10:35AM.

7. I have given considered thought to the contentions raised. The fundamental issues which arise for consideration are:

- i. Whether the petitioner, whose conduct is in question had an opportunity of explaining or defending himself, before the observations were made by the learned Trial Court for directing

the Commissioner of Police to suspend SHO, PS Kalkaji and for taking strict disciplinary action against the petitioner;

- ii. Whether there is evidence on record appearing on the conduct justifying the remarks; and
- iii. Whether it was necessary for the integral part of the proceedings pending before the learned Trial Court to make the observations in question.

8. It cannot be ignored that the disparaging remarks and directions for suspending the petitioner as well as for initiating the departmental action against the petitioner have serious impact on his official career.

Admittedly, the SHO/IO was not present when the matter was initially taken up for hearing by the learned Trial Court and serious aspersions were cast on the conduct of the SHO as well as directions were issued to the Commissioner of Police for suspending the petitioner. The status report filed at about 10:35 AM before the learned Trial Court, reflects that the matter had been taken up by the investigating agency for taking necessary action though the steps taken were not to the satisfaction of the learned Trial Court, which was dealing with trial of a heinous offence under Section 363/376 I.P.C. and Section 6 of POCSO Act.

9. It may be observed that though the Court was competent to point out the lapses on the part of the IO/SHO, if the efforts were lacking in earnestly taking up the steps for appearance of prosecutrix but *prima facie* the orders for suspension fell within the domain of disciplinary authority and the same appear to have been recommended without affording an opportunity to the petitioner. The condemnation of the petitioner with recommendation of suspension, in absence of any opportunity for explanation is in complete

negation of fundamental principles of natural justice, though the same does not in any manner condone lapses, if any, on the part of the investigating agency which can be considered after the detailed reply is filed on record.

The guiding principle for promotion of justice and prevention of injustice has to be kept in perspective, prior to making of any such disparaging remarks as the same has serious impact on the official career of an individual. Judicial pronouncements should not normally depart from sobriety, moderation and reserve.

In the facts and circumstances, the order passed by the learned Trial Court is stayed till further orders. In the meantime, investigating agency is also expected to take necessary steps in respect of prosecution of relevant FIR pending trial before the concerned Trial Court in accordance with law.

List on 25.11.2022.

A copy of this order be forwarded to the learned Trial Court as well as Commissioner of Police, Delhi for information and compliance.

**ANOOP KUMAR MENDIRATTA, J.**

**AUGUST 23, 2022/R**