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

Reserved on: 18th October, 2019
Decided on: 12th December, 2019

W.P (Crl.) No.2189/2018

SANDEEP KUMAR Petitioner
Through: Mr. Dibyanshu Pandey, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI)
& ORS. Respondents
Through: Mr. Rahul Mehra, Standing Counsel (Crl.)
with Mr. Chaitanya Gosain, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

J U D G M E N T

Dr. S. Muralidhar, J.:

1. This petition raises significant questions regarding the procedure to be followed by the police of one State, when they go to some other State or Union Territory, to effect an arrest while investigating a complaint or a First Information Report (FIR) disclosing a cognisable offence.

Background

2. The background in which the question arises is noticed in some detail in the first order passed by this Court on 24th July, 2018 in the present petition, which is essentially a petition seeking a writ of habeas corpus filed under

Article 226 of the Constitution of India. The said order reads as under:

“1. The present petition by Sandeep Kumar seeks the issuance of a writ of habeas corpus directing the Respondents to produce his wife, Nisha, before the Court. He states that he and Nisha got married in Ghaziabad, Uttar Pradesh on 28th June 2018. The Petitioner states that the marriage was conducted as per Hindu customs and rituals after Nisha, a Muslim, embraced the Hindu faith. It is stated that the marriage was registered with the Marriage Registration Officer-V, Ghaziabad. A copy of the marriage certificate is enclosed with the petition as Annexure P-3.

2. The Petitioner further states that on 2nd July 2018, Nisha's father, namely Mohd. Intzar (Respondent No.3), visited his residence at the campus of Jawaharlal Nehru University ('JNU') and created a ruckus and threatened both the Petitioner and Nisha with dire consequences. The Petitioner states that at around 8 pm on July 2018, the local police from PS Vasant Kunj (North) accompanied by JNU security personnel and others in civilian clothing forcibly took away Nisha and also handed over the Petitioner to "other people" who were in civilian clothing. The Petitioner- states that he was then taken to PS Loni in Ghaziabad and kept in a police lockup for three days and two nights and was abused and beaten. He names SI Sharad Kant Sharma of PS Loni as the officer who threatened to implicate him in a false case of rape if he tried to reunite with Nisha. The Petitioner says that he was released from custody on the night of 5th July 2018.

3. The Petitioner further states that his attempts thereafter to locate his wife were in vain. He states that Nisha called him on 11th July 2018 sounding extremely distressed, expressed her desire to return to him and informed him that even her life was under threat.

4. Having received advance notice of the petition. Inspector Gagan Bhaskar, SHO of PS Vasant Kunj (North) has filed a status report dated 24th July 2018. He states that at the instance

of Nisha's father, FIR No. 1217/2018 was registered at PS Loni on 3rd July 2018 under Section 366 IPC. The complainant was Azhar, the brother of Nisha, who reported that Nisha had been abducted by the Petitioner Sandeep Kumar.

5. The status report goes on to state that, on 3rd July 2018, SI Sharad Kant Sharma of PS Loni came to JNU along with his staff and found Nisha present here. It is stated that she was produced subsequently before the concerned Court where she stated that she left her home in anger due to a quarrel with her sister and is now returning to her family members of her own free will. The status report further notes that Nisha was accordingly "handed over to her parents by the investigating officer". It is stated that on 20th July 2018, SI Sharad Kant Sharma was again contacted telephonically and he confirmed the, above facts. Azhar, the brother of Nisha, was also contacted and he too stated that Nisha was present at home.

6. Today, Nisha has appeared along with her mother. SI Sharad Kant Sharma of PS Loni, who is also present, states that Nisha had made a statement under Section 164 Cr P C before the ACJM-5, Ghaziabad that she was returning to her parents of her own free will. However, he did not have a copy of the said statement. On her part, before this Court Nisha expressed her desire to return to the Petitioner.

7. At that stage, we decided that we should meet Nisha in the chambers. Nisha reiterated that she wishes to return to Sandeep. She stated that although she was born in 1995 her date of birth in the records is shown as 1991. It should be noted at this juncture that even according to her brother, Azhar, on whose complaint the aforementioned FIR was registered, Nisha is 20/21 years old. In other words, there is no dispute that Nisha is an adult who is entitled to take her own decisions.

8. Nisha confirmed to us that she had married Sandeep, the Petitioner, of her own free will. She also confirmed that the marriage was conducted in accordance with Hindu customs and

rituals. They also had a registered marriage at Ghaziabad. She explained that she gave a statement before the ACJM-5, Ghaziabad about, returning to her parents of her own free will under pressure from her parents. She was worried about something happening to her parents. She was expecting to convince them to reconcile with the fact that she had married Sandeep of her own free will and that is why she decided to return to them.

9. Nisha requested us to call her mother so that she could again reiterate, what she had said to us before her mother. We then spoke to Nisha's mother and explained to her that although she may have reservations about Nisha's marriage to someone of a different religion, Nisha is entitled to make her choices as she was an adult and cannot be put under any pressure in that regard. Nisha's mother stated before us that it would be up to Nisha to decide what she wanted to do with her life.

10. Since Nisha has reiterated before us, both in the Court as well as in chamber, that she wishes to return to the Petitioner, we direct that she can return from the Court itself with the Petitioner who is also present and has been identified by his lawyer as well as by Nisha.

11. In order to ensure that there is no untoward or unpleasant incident hereafter, the SHO of PS Vasant Kunj (North) is directed to visit the house of Sandeep and meet Sandeep's family and provide any security which he thinks might be necessary. We also direct SI Sharad Kant Sharma, who is present here before us, to take all necessary steps to ensure the safety and security of Nisha's parents and family.

12. In the status report filed today nothing is stated about how the police of PS Loni could so easily come to JNU and take away the Petitioner and Nisha and how Nisha, despite being over 21 years of age, was simply "handed over to her parents by the investigating officer" knowing fully well that she had married Sandeep of her own free will. Inspector Rajesh Kumar,

Additional SHO of PS Vasant Kunj (North), stated that he had no prior intimation of the visit by police officials from PS Loni in Ghaziabad. If that is the case, it begs the question as to why they did not insist on following the letter of the law and instead simply allowed the police officials from PS Loni to take away two adults from the JNU campus.

13. The Court, therefore, directs that SI Sharad Kant Sharma of PS Loni will file an affidavit before this Court explaining how he proceeded to act on the complaint received by him from Azhar on the basis of which FIR No. 1217/2018 was registered and, in particular, whether he informed the police officials at PS Vasant Kunj (North) of his intention to visit JNU on 3rd July 2018. He will also specifically answer the allegations about Sandeep having been kept in custody in the police lockup at PS Loni from 3rd July 2018 till the night of 5th July 2018 without being produced before a Court.

14. The Court also directs Inspector Gagan Bhaskar, the SHO of PS Vasant Kunj (North), to file an affidavit explaining the circumstances under which he permitted Sandeep and Nisha to be taken away from JNU by the police of PS Loni without the requirements of law being complied with.

15. Both these affidavits of SI Sharad Kant Sharma and Inspector Gagan Bhaskar will be filed before the next date of hearing. Both of them will remain present in the Court on the next date. They will also report to the Court about the compliance of the other directions. On the next date of hearing, the Petitioner and Nisha need not be present.

16. List on 7th August, 2018.

17. Order *dasti* under the signature of the Court Master.”

Order appointing a Committee

3. Thereafter on 23rd August, 2018, the Court discussed the affidavit dated

4th August, 2018 filed by Inspector Gagan Bhaskar, the Station House Officer (SHO) of Police Station (PS) Vasant Kunj (North), as well as the affidavit of the same date of Sub-Inspector (SI) Sharad Kant Sharma of PS Loni in Ghaziabad, Uttar Pradesh. Not satisfied with the two affidavits, the Court decided to constitute a Committee to conduct an enquiry into the matter and in particular the legality of the actions of the police attached to PS Loni (Ghaziabad) and PS Vasant Kunj (North). The said order dated 23rd August, 2018 of this Court reads as under:

“1. As far as the couple is concerned, the counsel for the Petitioner informs the Court that even though there were some threatening calls made to the Petitioner, as both he and his wife have been provided personal security officers ('PSOs') pursuant to the orders passed by this Court on 7 August 2018, they are under no immediate threat at present. However, the Court directs that the security arrangements made for the Petitioner and his wife will continue until further orders.

2. In its order dated 24 July 2018, this Court has adverted to a police officer from PS Loni in the State of Uttar Pradesh, viz. SI Sharad Kant Sharma, coming to Jawaharlal National University ('JNU') and taking away the Petitioner and his wife Nisha without intimating the local police at PS Vasant Kunj (North). The Court had also taken note of the Petitioner's claim that he had been taken to PS Loni in Ghaziabad, kept in police lock-up for three days and two nights, and was abused and beaten. He had specifically named SI Sharma of PS Loni as the officer "who threatened to implicate him in a false case of rape if he tried to reunite with Nisha". In this context, this Court had directed Inspector Gagan Bhaskar, the Station House Officer ('SHO') of PS Vasant Kunj (North), as well as SI Sharma of PS Loni to file separate affidavits disclosing their respective conduct in this matter.

3. In an affidavit dated 4th August, 2018 filed by Inspector

Bhaskar, it is stated that as per the record of PS Vasant Kunj (North), "Sharad Kant Sharma neither informed the undersigned nor lodged the arrival or departure in daily diary of PS Vasant Kunj (North)". It is further stated in para 10 as under:

"10. That on further enquiry after hearing of dated 24/07/2018, SI Sharad Kant Sharma informed that on 3.7.18 he met HC Rambir beat Head Constable posted in JNU beat of Police Station Vasant Kunj North. On enquiry from HC Rambir he stated that on 03/07/18 he was present at JNU and met SI Sharad Kant Sharma of Police Station Loni, Ghaziabad, UP who came for investigation of a case. He went to H N. 471, Pashchiamabad, JNU Campus, New Delhi with SI Sharad Kant Sharma. SI Sharad Kant Sharma conducted the enquiry and took the girl with him. HC Rambir stated that he asked SI Sharad Kant Sharma to go to the Police Station Vasant Kunj North and lodge a DD entry in this regard and then proceed accordingly with the investigation. SI Sharad Kant Sharma assured him that he is going to Police Station Vasant Kunj North. On this assurance he continued with his work in JNU. However for his lapse departmental action have been initiated."

4. The affidavit is silent on whether SI Sharad Kant Sharma came to JNU in his uniform or in plain clothes. It is also silent on whether the Petitioner was found in the room from where Nisha is supposed to have accompanied SI Sharad Kant Sharma and whether SI Sharad Kant Sharma in fact took the Petitioner also along with him. The Court is dissatisfied with the above affidavit that has been filed as it fails to answer the above key issues that have already been noted by this Court in its order dated 24th July 2018.

5. It is of concern that the deponent of the above affidavit, Inspector Gagan Bhaskar, SHO of PS Vasant Kunj (North),

who is present in Court today, states that he did not ask HC Rambir whether SI Sharad Kant Sharma came there in plain clothes and whether the Petitioner was also picked up by him. Inspector Bhaskar has shown to the Court a copy of a letter dated 3 August 2018 written by him to the Deputy Commissioner of Police ('DCP'), South District, New Delhi enclosing a 'misconduct report' and seeking initiation of disciplinary action against HC Rambir [who is attached to PS Vasant Kunj (North)]. It is surprising that Inspector Bhaskar has till date not brought to the attention of the DCP (South District) or the Commissioner of Police to the obvious failure of SI Sharad Kant Sharma, attached to PS Loni in Ghaziabad to inform the SHO of PS Vasant Kunj (North) before proceeding to JNU.

6. The Court has also perused the affidavit dated 4th August, 2018 of SI Sharad Kant Sharma. He gives no explanation as to why he did not inform the officials at PS Vasant Kunj (North) before proceeding to JNU. He merely states that when he reached JNU, one "local beat officer met me" and that thereafter, he along with his own staff and the said beat officer reached H.No.471, Pashchiamabad, JNU Campus, New Delhi and then after some conversation, Nisha agreed to accompany him of her own free will. He states that HC Rambir "was left at JNU and was asked to inform PS Vasant Kunj (North) about the girl's recovered". Apart from being silent about whether he went in civil clothes, SI Sharma is in complete denial of having picked up the Petitioner as well or having taken him to PS Loni.

7. The Court is not satisfied with this affidavit filed by SI Sharma wherein he does not appear to have disclosed the complete facts. It appears improbable that having proceeded on the basis of an FIR disclosing a cognizable offence naming the Petitioner as the main accused, SI Sharad Kant Sharma left JNU without arresting the Petitioner.

8. It is perhaps not a mere coincidence that the affidavits filed by the police officers are both dated 4 August 2018 and have

been attested by the same notary public. Further, consecutive serial numbers appear on them. All of this points to both these affidavits being prepared simultaneously. Neither of these affidavits seem to address the concern of this Court with regard to the blatant violation by SI Sharma of his legal obligation to inform the officials at PS Vasant Kunj (North) of his coming to JNU in plain clothes and taking into custody the Petitioner and his wife.

9. Mr. Rahul Mehra, learned Standing counsel, fairly states that this is a matter of grave concern and is far from a one-off occurrence. In *Tasleema v. State (NCT of Delhi)* (2009) ILR 6 Del 486, this Court noted with consternation that police officials from Gujarat were able to arrest and takeaway a juvenile from Delhi without informing the Delhi Police. Such practice is obviously contrary to the police manuals and if such actions go unchecked, it will amount to condoning lawlessness by the police force. In a country governed by the rule of law, this is simply unacceptable.

10. There are also instances of persons impersonating police officers, producing fake identity cards and taking away persons or property. It appears that the extant instructions on the procedure to be followed by police officers of one State seeking to arrest persons or conduct searches and investigation in another State or Union Territory are not being observed. It is time to revisit the procedures devised to ensure that the life and liberty of persons is not compromised on account of the lawlessness of the police force.

11. This Court accordingly constitutes the following Committee to conduct an enquiry into the matter and in particular the legality of the actions of the police attached to PS Loni (Ghaziabad) including SI Sharad Kant Sharma and the PS Vasant Kunj (North):

1. Justice S.P. Garg, former Judge of this Court

2. Ms. Kanwaljeet Deol, IPS former DG (Investigation), NHRC

12. The Secretary, Ministry of Home Affairs (MHA), Government of India is directed to ensure that there is a full cooperation extended to the above Committee both by the Delhi Police as well as the police in District Ghaziabad. The Committee will be given full access to the relevant records and is permitted to question the police personnel in both PSs. The Committee will also be provided with all relevant circulars, instructions and rules governing the procedure to be followed by the police of one State when they go into some other State or Union Territory while investigating a complaint/FIR. As part of the report, the Committee will give suggestions on how the system can be improved and such instances of violations by the police of the procedure minimised. The Committee is free to speak to such number of professionals, experts and former and serving police officers including those in Delhi and Uttar Pradesh as the Committee may consider appropriate.

13. The Committee is requested to submit its report to this Court in a sealed cover on or before 30th September 2018. The honorarium of the members of the Committee (which will be fixed on the next date) and the reimbursement of the expenses of travel, transport, secretarial assistance, and incidental expenses will be borne in equal halves by the State of UP and the Government of NCT of Delhi.

14. It will be open to the members of the Committee to seek further directions. A complete set of paper book will be supplied to each of the members. It will be open to the Standing Counsel as well as the counsel for the Petitioner to make a submission before the Committee.

15. The matter will be treated as part-heard and be listed on 12th October, 2018 at 2.15 p.m.

16. Certified copies of this order be delivered forthwith through a Special Messenger to the members of the Committee along

with a complete set of the paperbook and the previous orders. A copy of this order also be delivered, again through Special Messenger, forthwith to the Secretary, MHA, the Secretary (Home) and the Director General of Police of the Government of Uttar Pradesh, the Secretary (Home) Government of the National Capital Territory of Delhi and the Commissioner of Police, Delhi.

17. Order *dasti*.”

4. By an order dated 12th October, 2018, this Court extended the time for the committee to submit its report till 31st December, 2018. The Court noted that the Committee had by then recorded the statement of 13 witnesses and had completed one aspect of the inquiry. However, the Committee was not being provided with the relevant circulars by the Director General of Police (DGP), Uttar Pradesh, and the office of the Commissioner of Police (CP) of Delhi despite request by the Committee by e-mails dated 19th and 27th September, 2018. Consequently, the Court by the same order directed the CP, Delhi and the DGP, Uttar Pradesh to provide the committee with information requested not later than 31st October, 2018.

The Committee's report

5. Pursuant to the above orders, the Committee has submitted its report dated 4th February, 2019. There are specific findings of the Committee after examining 13 witnesses including the police personnel attached to both the police stations, i.e., PS Loni and PS Vasant Kunj. These findings could be summarized as under:

(i) Nisha and Sandeep got married as per Hindu customs and rites on 28th

June, 2018 with mutual consent. The marriage was registered at Ghaziabad. This was an inter-religious marriage.

(ii) After marriage, both Sandeep and Nisha started living at Sandeep's residence at the JNU Campus in Delhi. While Sandeep's parents had no objection, Nisha's relatives were unable to reconcile with it. Instead of filing a writ petition for habeas corpus to seek her production, they visited her at the JNU Campus and insisted that she accompany them. She however declined.

(iii) On 3rd July, 2018, Nisha's brother Azhar lodged a written complaint with PS Loni levelling false allegations that Sandeep had kidnapped Nisha at 4 am on 28th June, 2018 and that she was not traceable. As a result, FIR No.1217 of 2018 was registered at PS Loni against Sandeep under Section 366 IPC.

(iv) The investigation of the above FIR was assigned to SI Sharad Kant Sharma. Accompanied by Lady Constable Neelam and Nisha's relatives, Adil and Azhar, SI Sharma arrived in a Scorpio arranged by Nisha's relatives at Sandeep's residence at JNU Campus at around 5 pm on 3rd July, 2018. The police officials were in uniform.

(v) At the gate of JNU Campus, they met Head Constable (HC) Rambir Meena, a Beat Constable from PS Vasant Kunj (North). HC Meena who knew Sandeep's residence pointed out his house to the UP police. Nisha and Sandeep and his parents were in the house at that time. Nisha was not in

illegal detention. She was unwilling to go with her relatives.

(vi) Sandeep and Nisha were taken in the Scorpio vehicle to PS Loni against their wishes and consent. SI Sharma did not visit PS Vasant Kunj (North) to record any arrival or departure entry. At PS Loni, Nisha was sent along with her parents to her house. On the next day, she was taken for medical examination but declined to undergo it.

(vii) Nisha's statement was recorded by the Additional Chief Judicial Magistrate - V under Section 164 of the Code of Criminal Procedure, 1973 ('Cr PC'). She disclosed that due to a quarrel with her sister Arshi, she had left the house in anger. The statement was not voluntary. It was given under emotional stress when she was informed that her father was ill. She was prevailed upon to stay with her parents.

(viii) Nisha was given false assurances of her marriage with Sandeep. During her stay with her parents, she was not permitted to talk to anyone. She got a mobile from her father and spoke to Sandeep at around 2 am and informed him that she was being illegally detained and that her parents planned to marry her off to someone else. She insisted that Sandeep should take her away from there.

(ix) Sandeep then filed the present writ petition in the Court for directions. When Nisha was produced before this Court, she informed the Court that she desired to stay with Sandeep. She then accompanied Sandeep to her matrimonial home from the Court itself. Had Sandeep not taken recourse to

legal remedy, the investigating officer, i.e., SI Sharma would have been successful in handing over Nisha's custody to her parents without her consent.

Findings on the role of the police

6. As regards the role of the different police officials of the two PSs, the Committee has returned the following categorical findings.

(i) SI Sharma of PS Loni manipulated the official record and made wrong, incorrect and false entries.

(ii) "A fantastic story was concocted in Court" by SI Sharma stating that Nisha had been recovered from a place near Delhi border in the State of UP although Nisha was in fact picked up from Sandeep's residence at JNU Campus, Delhi by him along with his team on 3rd July, 2018. SI Sharma recorded a false entry GD No.59 (Ex. PZ) at PS Loni to the effect that on the basis of secret information received by him about the presence of Nisha at Tiraha Loni, she was recovered from there. The Committee's categorical finding is "this is absolute falsehood."

(iii) SI Sharma avoided showing Nisha's presence at Sandeep's house; he suppressed his visit to Delhi without any prior permission of the higher officers. SI Sharma did not make any departure entry at PS Loni indicating his intention to visit Delhi along with Nisha's relatives in the Scorpio arranged for by them. The Committee has drawn attention to Rule 22:50 of the Punjab Police Rules (PPR) which prescribes a deterrent punishment for

making false entries in the Daily Diary (DD) knowingly or having reasons to believe it to be untrue.

(iv) It stood proved that Sandeep was taken by SI Sharma along with Nisha in the same vehicle to PS Loni. SI Sharma did not follow the due procedure. He did not seek prior permission from senior officers to visit Delhi; he did not report his arrival or departure at the local police station; he did not seek any assistance, co-operation and permission from the local police to effect recovery at Sandeep's residence. He did not verify the contents of the written complaint by Nisha's bother/parents. He along with Nisha's relatives proceeded to Delhi for her recovery in a vehicle arranged by her relatives. He did not join any respectable person from the locality. He did not prepare any document at the spot that he was taking Nisha and Sandeep to PS Loni.

(v) The Committee has found that Sandeep was not produced before the jurisdictional Magistrate at any time. His detention, for whatever duration, remained illegal. Further, the Committee found that the moment police officials of UP took Sandeep into the vehicle, it amounted to taking him into custody. It is "highly unbelievable" that Nisha had accompanied UP police willingly of her own accord. The UP police officials in uniform accompanied by Nisha's relatives forced Nisha to sit in the same vehicle by instilling fear in her mind. SI Sharma did not follow the law and legal procedure while removing Nisha from the custody of her legally wedded husband Sandeep. She was taken to PS Loni against her wishes.

(vi) The Committee has found that the power to arrest was grossly misused

by SI Sharma. He had no credible material justifying Sandeep's arrest; it was arbitrary. Nisha was not under illegal detention by Sandeep. She was living there of her own free will after marriage and was entitled to exercise her choice and freedom. SI Sharma did not verify the genuineness of the complaint, did not consider it necessary to issue notice under Section 160 of the Cr PC to Sandeep, whose name and address was given in the FIR; SI Sharma did not try to seek arrest/search warrants. The circumstances indicate that SI Sharma did not act innocently. It smacks of preplanning and a deliberate move. There was a gross violation of law and of safeguards introduced in Section 41B of the Cr PC.

(vii) According to the Committee, there was no credible evidence to infer if Sandeep was tortured or physically beaten in the lock up before release. Sandeep did not get himself medically examined after release. It is on record that Sandeep was criminally intimidated. The possibility of manhandling could not be ruled out.

7. Turning to HC Rambir Meena, the Beat Constable from PS Vasant Kunj (North), the Committee has recorded that he failed to ensure if SI Sharma had prior to arriving at the JNU Campus, visited PS Vasant Kunj (North) or had recorded any entry to seek assistance of local police. Even after SI Sharma took Sandeep and Nisha away in the vehicle, HC Meena did not inform the SHO of PS Vasant Kunj (North). On return to the PS Vasant Kunj (North) in the evening, HC Meena did not record any entry showing that SI Sharma and his team had visited Sandeep's residence and had taken Nisha and Sandeep away with him. HC Meena did not intervene to protect

Nisha from being taken away without reason and legal authority from an area within his jurisdiction. No information was recorded at PS Vasant Kunj (North) that the UP police was taking with them individuals residing within the jurisdiction of that PS.

8. As regards the other police personnel, the Committee observed that:

(i) SHO Gagan Bhaskar of PS Vasant Kunj (North) cannot be held liable since it was not brought to his notice that the UP police had taken away Sandeep and Nisha with them. However, he did not divulge the correct facts in his affidavit to this Court. He got the affidavit casually prepared through SI Manish Kumar without verifying the correct facts. The possibility of the affidavits of SHO Gagan Bhaskar and SI Sharma be prepared at the same time from the same Notary Public, could not be ruled out.

(ii) SHO Umesh Pandey of PS Loni did not initiate any action/proceedings against SI Sharma at any time for his illegal actions/proceedings. His role in the entire episode is under cloud and “his complicity in the incident cannot be ruled out”. His acts do not at all appear to be justified and reasonable.

(iii) Lady Constable Neelam, attached to PS Loni failed to make any entry at PS Loni about her arrival and departure on that day. She was complicit in the illegal acts in taking and keeping Nisha and Sandeep in custody. She did not object to the DD entry 59 whereby Nisha was shown to have been recovered from Tiraha Loni in her presence.

9. It is, thus, seen that the Committee has, on the basis of evidence presented to it, found enough *prima facie* material against SI Sharma, SHO Umesh Pandey and Lady Constable Neelam attached to PS Loni. The Committee has also commented adversely on the conduct of HC Rambir Meena and to a lesser extent against Inspector Gagan Bhaskar, the SHO of PS Vasant Kunj (North).

Directions regarding the conduct of the police

10. As far as the conduct of the above police officials is concerned, the Court directs that a copy of the report of the Committee be immediately forwarded both to the CP, Delhi and the DGP, Uttar Pradesh for appropriate disciplinary action to be initiated on the basis of the said report against the above named police officials under their respective control and supervision. Needless to state that each of them will in turn be provided with a copy of the report and be given opportunity of defending themselves in the disciplinary inquiry in accordance with law. The report of the Committee will constitute *prima facie* material as far as the enquiry is concerned. The disciplinary inquiry in each case will be held by a senior level official, strictly in accordance with the procedures prescribed, and will be completed not later than six months from the date of receipt by the CP, Delhi and the DGP, Uttar Pradesh respectively of the copy of the report of the Committee together with the certified copy of this order.

Committee's suggestions on the procedure

11. The other important part of the report of the Committee concerns the non-compliance by the police personnel with the law and the prescribed

procedure. Article 22 (2) of the Constitution of India which mandates that “Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.” There are exceptions carved out in Article 22 (3) but those do not get attracted in the instant case.

12. Sections 56 and 57 of the Cr.P.C. further reiterate the above Constitutional mandate. There are specific provisions in the Cr.P.C. that set out in detail the procedure to be followed for inter-state arrests. Some of these provisions were introduced as a result of the judgment of the Supreme Court in *D. K. Basu v. Union of India (1997) 1 SCC 416*. The relevant provisions read thus:

“41B. Procedure of arrest and duties of officer making arrest: Every police officer while making an arrest shall:

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be:

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named

by him to be informed of his arrest.”

“48. Pursuit of offenders into other jurisdictions.: Police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.”

“77. Where warrant may be executed: A warrant of arrest may be executed at any place in India.”

“79. Warrant directed to police officer for execution outside jurisdiction.

(1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.”

“80. Procedure on arrest of person against whom warrant issued.—When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.”

13. A manual titled “Functions, Roles and Duties of Police in General” Brought out by the Bureau of Police Research and Development (<http://www.bprd.nic.in/WriteReadData/userfiles/file/6798203243-Volume%202.pdf>) explains the steps to be taken in regard to inter-state crimes. The relevant extracts read as under:

“Crime of one Police Station (hereafter “PS”), reported at other PS:

If a crime committed in the jurisdiction of another PS within the State is reported to the Station House Officer of a Police Station, a First Information Report should be issued and its substance entered in the Station House Diary.

Action by PS where crime is reported:

If the place of occurrence is near and is easily accessible from the Station House, the Station House Officer will at once proceed to the spot, take up investigation and continue it till relieved by the police having jurisdiction. Simultaneously, action will be taken to send immediate intimation to the police having jurisdiction over the place. When the investigation is taken over by the latter, the First Information Report should be transferred.

When crime is reported at the nearest PS:

If the place of occurrence is far off, immediate intimation should be sent to the police having jurisdiction over the place by the quickest possible means and the First Information Report transferred to them simultaneously. If any of the persons, who are reasonably believed to have taken part in the offence, are found in the limits of the station where the offence is reported and if the offence alleged against them is of a serious nature and there is reasonable apprehension that they will abscond unless immediately taken into custody, they should be arrested and produced before the court having jurisdiction, intimation of their arrest being promptly sent to the Police Station within the jurisdiction of which the offence occurred.

When crime of another State is reported:

If a report relates to a cognizable offence that was committed outside the State, it will be entered in the Station House Diary and a certified copy of

the entry will be given to the person who made the report and he will be referred to the Station House Officer within whose jurisdiction the offence took place. If any of the persons who are reasonably believed to have taken part in the commission of the offence are found in the State territory outside the jurisdiction of the PS, and if the offence alleged against them is of a serious nature and there is reasonable apprehension that they will abscond unless immediately taken into custody, they will be arrested and produced before the court having jurisdiction, intimation of their arrest being promptly sent to the Police Station within the jurisdiction of which the offence occurred.”

14. In the present case, the Committee, *inter alia*, examined the above provisions as well as a circular issued by the CP, Delhi dated 7th September, 2012, pursuant to the Office Memorandum (OM) dated 16th May, 2012 issued by the Ministry of Home Affairs (MHA) setting out the steps to be followed regarding arrest of an accused outside the State/Union Territory where the compliant/FIR is registered. This procedure is based on Sections 48, 77, 79 and 80 of the Cr.P.C. Particular to Delhi. This circular mandates that police officers arresting an accused/fugitive outside Delhi should establish contact with the concerned State police. It states that endeavour should be made to obtain a transit remand unless exigency of the situation warrants otherwise. The person can be produced before the Magistrate having jurisdiction of the case without infringing the mandate of Article 22 of the Constitution and Sections 56 and 57 of the Cr.P.C. The Committee also examined the procedure followed in Andhra Pradesh, Karnataka and Kerala.

15. The Committee has, after examining all of the above material in detail, given detailed suggestions as to the protocol to be followed by the police in

the event of inter-state arrest. These read as under:

“1. The Police Officer after assignment of the case to him, must seek prior permission/sanction of the higher/superior officers in writing or on phone (in case of urgency) to go out of State/UT to carry out investigation.

2. In a case when the police officer decides to effect an arrest, he must set out the facts and record reasons in writing disclosing the satisfaction that arrest is necessary for the purpose of investigation. At first instance, he should move the Jurisdictional Magistrate to seek arrest/search warrants under Section 78 and 79 Cr PC except in emergent cases when the time taken is likely to result in escape of the accused or disappearance of incriminating evidence or the procurement of arrest/search warrant would defeat the purpose. The Police Officer must record reasons as to what were the compelling reasons to visit other State without getting arrest/search warrants.

3. Before proceeding outside the State, the police officer must make a comprehensive departure entry in the Daily Diary of his Police Station. It should contain names of the police officials and private individuals accompanying him; vehicle number; purpose of visit; specific place(s) to be visited; time and date of departure.

4. If the possible arrestee is a female, a lady police officer be made part of the team. The Police Officers should take their identity cards with them. All police officers in the team should be in uniform; bear accurate, visible and clear identification and name tags with their designations.

5. Before visiting the other State, the Police Officer must endeavour to establish contact with the local Police Station in whose jurisdiction he is to conduct the investigation. He must carry with him the translated copies of the Complaint/FIR and other documents in the language of the State which he intends to visit.

6. After reaching the destination, first of all, he should inform the concerned police station of the purpose of his visit to seek assistance and co-operation. The concerned SHO should provide/render all legal assistance to him. Entry to this effect must be made at the said police station.

7. After reaching the spot of investigation, search, if any should be strictly conducted in compliance of the procedure laid down u/s 100 Cr PC. All endeavour should be made to join independent public witnesses from the neighbourhood. In case of arrest, the police officer must follow the procedure u/s 41A and 41B and Section 50 and 51 Cr PC. The process of arrest carried out by the police must be in compliance with the guidelines given in *DK Basu case (Supra)* and the provisions of CrPC.

8. The arrested person must be given an opportunity to consult his lawyer before he is taken out of State.

9. While returning, the police officer must visit the local police station and cause an entry made in the Daily Diary specifying the name and address of the person(s) being taken out of the State; articles if any, recovered. The victim's name be also indicated.

10. Endeavor should be made to obtain transit remand after producing the arrestee before the nearest Magistrate unless exigencies of the situation warrant otherwise and the person can be produced before the Magistrate having jurisdiction of the case without infringing the mandate of S. 56 and 57 of Cr.P.C. within 24 hours.

11. The magistrate before whom the arrestee is produced, must apply his mind to the facts of the case and should not grant transit remand mechanically. He must satisfy himself that there exists material in the form of entries in the case diary that justifies the prayer for transit remand. The act of directing

remand of an accused is fundamentally a judicial decision. The magistrate does not act in executive capacity while ordering detention of the accused. He must ensure that requirements of S. 41 (1)(b) are satisfied. The police officer must send the case diary along with the remand report so that the magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. The magistrate should briefly set out reasons for his decision.

(Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314)

12. Another mandatory procedural requirement for the Magistrate considering a transit remand application is spelt out in Article 22 (1) of Constitution of India. This entitles the person arrested to be informed as soon as may be the grounds of such arrest. The Magistrate has to ensure that the arrested person is not denied the right to consult and to be defended by a legal practitioner of his choice. The Magistrate should ask the person arrested brought before him whether in fact he has been informed of the grounds of arrest and whether he requires to consult and be defended by any legal practitioner of his choice. *(DK Basu, Supra)* After the pronouncement of this judgment by the Hon'ble Supreme Court, new Sections 41A to 41D have been added to prevent unnecessary arrest and misuse of powers. Denying a person of his liberty is a serious matter.

13. In terms of S. 41C, control rooms be established in every district. Names and addresses of the persons arrested and designation of the Police Officers who made the arrest be displayed. Control Room at State level must collect details of the persons so arrested.

14. The police officer must record all the proceedings conducted by him at the spot and prepare an 'arrest memo' indicating time, date of arrest and name of the relation/friend to whom intimation of arrest has been given. It must reveal the reasons for arrest.

15. Since the arrestee is to be taken out of his State to a place away where he may not have any acquaintance, he may be permitted to take along with him (if possible), his family member/acquaintance to remain with him till he is produced before the jurisdictional Magistrate. Such family member would be able to arrange legal assistance for him.

16. The arrested person must be produced before the jurisdictional Magistrate at the earliest, in any case, not beyond 24 hours from the date of arrest excluding the journey time so that arrest of such person and his detention, if necessary, may be justified by a judicial order. The 24 hours period prescribed u/s 57 Cr PC is the outermost limit beyond which a person cannot be detained in police custody. It does not empower a police officer to keep a person in police station a minute longer than is necessary for the purpose of investigation and it does not give him an absolute right to keep a person till 24 hours.

17. On arrival at the police station, the police officer must make an arrival entry in the record and indicate the investigation carried out by him, the person arrested and the articles recovered. He should also inform his senior police officers/SHO concerned about it immediately. The superior Police Officer shall personally supervise such investigation.

18. The police officer should effect arrest u/s 41(1)(b) Cr PC only when he has reasonable suspicion and credible information. He must satisfy himself about the existence of the material to effect arrest. There must be definite facts or averments as distinguished from vague surmises or personal feelings. The materials before him must be sufficient to cause a bona-fide belief. He cannot take shelter under another person's belief or judgment. He must effect arrest at his own risk and responsibility as the effect of illegal arrest could be commission of offence of wrongful confinement punishable u/s 342 IPC. Burden lies on the IO to satisfy the Court about his bona-fide. No arrest can be made because it is lawful for the police officer to do so. Denying a person of his liberty is a serious matter.

19. Medical examination soon after arrest to avoid possibility of physical torture during custody should be conducted.

20. The IO must maintain a complete and comprehensive case diary indicating the investigation carried out by him.

21. The log book of the vehicle used for transportation must be maintained and signed. The IO must indicate whether the vehicle was official or a private one; name of its driver and how and by whom it was arranged. Only official vehicle should be used for transportation to the extent possible.

22. At the time of recovery of the prosecutrix, the police officer, if he is satisfied that she is adult, should ascertain from her at the spot, whether she was present there with her free will. If the victim/prosecutrix is not willing to accompany the police officer or her relatives, the police officer must not exert force on the prosecutrix to take her away against her wishes. However, if the prosecutrix/victim of her own accord expresses willingness to accompany the police officer/relatives, her consent in writing should be obtained at the spot.

23. In case where the police officer finds the victim/prosecutrix to be a 'minor', soon after recovery, she should be produced before the local Child Welfare Committee for further decision regarding her custody. She must not be made to stay in the Police Station during night hours.

24. Statement of the prosecutrix u/s 164 Cr.P.C. must be recorded at the earliest.

25. MHA/Central Govt/Commissioner of Police must frame suitable guidelines for police officers to render all suitable assistance. The failure to adhere to the rules/guidelines should render the police officer liable for departmental action as well as contempt of the Court.

26. The public prosecutor should provide required assistance to the police officer visiting his State at the time of seeking transit remand.

27. The MHA/State Government should circulate the Rules/Guidelines/Notifications etc from time to time to the Police officers in the State to create awareness. Periodically training should be provided to the Police Officers to sensitize them.

28. Instructions/Guidelines of similar nature should exist in all the States/UTs for speedy, smooth and effective inter-State investigation.

29. The delinquent Police Officer can be directed to pay compensation under the public law and by way of strict liability.”

16. There is a further suggestion by way of addition to the report which reads as under:

“In partial modification of the joint report, it is suggested that if, in case of urgency or other considerations in the interest of investigation, it is not found feasible to inform the police station encompassing the jurisdiction of the search, seizure, arrest or investigation before the event, this should be done soon after the search, seizure, arrest etc. has been conducted. In all cases a diary entry should mandatorily be made in the police station of jurisdiction. Extant instructions of various state forces such as Karnataka already include this provision of informing after the event. Section 166 Cr PC also relevantly requires that if a search has to be conducted in another police station, the SHO may require the SHO of that police jurisdiction to do the needful. In case there are chances of loss of evidence, he may himself get the search conducted and forthwith inform the officer of the concerned police station.”

17. Considering that the Committee comprised of a former Judge of this

Court and a former DGP of the Delhi Police who was a police officer of the Indian Police Service, the Court accepts the above suggestions and directs that they be adopted for implementation by the CP, Delhi as well as the DGP, Uttar Pradesh in their respective jurisdictions. Orders to this effect shall be issued by the DGP, Uttar Pradesh and the CP Delhi within two weeks.

Compensation to the Petitioner and his wife

18. Now for the last part, which is compensating Sandeep and Nisha both of whom were wrongfully taken into custody. While Sandeep was forcibly detained in PS Loni in violation of the law, Nisha was against her wishes handed over to her parents by SI Sharma attached to PS Loni.

19. The Court notes that this is not a one-off instance of failure by the police official of a particular State where an FIR/complaint has been registered and the police officials have failed to follow the due procedures set out in the Cr.P.C. and other instructions issued from time to time concerning arrest of persons in a different State/Union Territory. Some of these instances constitute the subject matter in the decisions of various High Courts. Illustratively reference could be made to the decisions in *State of Manipur v. Luis Topno 2012 SCC OnLine Gau 830*, *Avneesh Mishra v. State of UP 2013 SCC OnLine All 13956*, *Kura Rajaiah @ K. Rajanna v. Government of Andhra Pradesh 2007 Cri LJ 2031*. The Court would also like to refer to the decision of this Court in *Tasleema v. The State (NCT of Delhi) ILR (2009) VI Delhi 486*, where a 14-year-old boy was picked up by the Gujarat police from Delhi and taken to Gujarat without following the due procedure.

20. This Court is conscious that this is not the first occasion where a constitutional Court has been asked to declare a wrongful arrest to be unconstitutional and for compensation to be awarded as a result thereof to the victim. Among the earliest of such cases was *Bhim Singh, MLA v. State of J&K (1985) 4 SCC 677*. There the Petitioner, a Member of the J&K Legislative Assembly, was deliberately prevented from attending the session of the Legislative Assembly by being wrongfully arrested and detained. The Supreme Court observed that the police had acted “in a most high-handed way”. It went on to observe:

“Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. However, the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs otherwise is now established by the decisions of this court in *Rudul Sah v. State of Bihar and Anr. 1983 (3) SCR 508* and *Sebastian M. Hongray v. Union of India 1984 AIR SC 1026*. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In

appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000/- within two months from today. The amount will be deposited with the Registrar of this court and paid to Shri Bhim Singh.”

21. In *Nilabati Behera v. State of Orissa (1993) 2 SCC 746*, the Supreme Court outlined the legal principle governing the grant of compensation for constitutional wrongs as under:

“35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah v. State of Bihar* granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the

wrongdoer and it is in that spirit that the Courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned.”

22. In *Tasleema v. State (NCT of Delhi)* (*supra*), a Division Bench of this Court was called upon to decide whether the Petitioner should be compensated by the State of Gujarat, as a public law remedy, by way of strict liability, for the misadventure of its police officials in taking away her minor son, without reason and without the authority of law, from Delhi to a lock-up in Ahmedabad. These questions were to be decided in the backdrop of the allegation that the Petitioner, her husband and children were Bangladeshis. After finding the State of Gujarat liable to pay compensation to the victim, this Court turned its attention to question of computation of compensation and held:

"64. Now comes the question of how to calculate the amount of compensation that should be awarded to the petitioner and her son Shamim. In *Bhim Singh* (*supra*), a case decided in 1985, the Supreme Court had awarded a sum of Rs 50,000/- by way of compensation for the deprivation of personal liberty of Mr Bhim Singh by the police officials of the J & K Government. We see no reason to award anything less, particularly, as, in the present case we are concerned with the deprivation of the personal liberty of a minor....”

23. In the facts and circumstances, the Court directs that compensation of Rs.50,000/- each to both Sandeep and Nisha shall be paid by the State of

Uttar Pradesh for their illegal detention by the UP police which stands established *prima facie* by the report of the Committee. The amounts should be paid within a period of four weeks along with a letter written by the Director General of Police of Uttar Pradesh himself, apologizing to each of them for the conduct of his police officials.

Summary of Directions

24. The petition is disposed of with the following directions:

(i) A copy of the report of the Committee be immediately forwarded both to the CP, Delhi and the DGP, Uttar Pradesh for appropriate disciplinary action to be initiated on the basis of the said report against the police officials under their respective control and supervision as directed in para 10 of this judgment.

(ii) The disciplinary inquiry in each case will be held by a senior level official, strictly in accordance with the procedures prescribed, and will be completed not later than six months from the date of receipt respectively by the CP, Delhi and the DGP, Uttar Pradesh respectively of the copy of the report of the Committee together with the certified copy of this order.

(iii) The suggestions of the Committee as set out in paras 15 and 16 of this judgment are directed to be adopted for implementation both by the Delhi Police and the police in the State of Uttar Pradesh. Orders to this effect shall be issued by the DGP, Uttar Pradesh and the CP Delhi within two weeks

(iv) A certified copy of this judgment together with a complete copy of the report of the Committee (together with its annexures) will be delivered forthwith to the CP, Delhi by a Special Messenger. Likewise copy of this judgment together with a complete copy of the report of the Committee (together with its annexures) will be delivered forthwith to the DGP, Uttar Pradesh by an approved courier and the tracking report of proof of delivery shall be kept in the file.

(v) Compensation of Rs.50,000/- each to both Sandeep and Nisha shall be paid by the State of Uttar Pradesh for their illegal detention by the UP police which stands established *prima facie* by the report of the Committee. The amounts should be paid within a period of four weeks along with a letter written to each of them personally by the Director General of Police of Uttar Pradesh himself, apologizing to each of them for the conduct of his police officials.

(vi) The CP, Delhi and the DGP, Uttar Pradesh will file compliance reports in this Court within six months and in any event not later than 30th June 2020. The Registry will place the petition for this purpose before the Court immediately after the Court reopens i.e. 6th July 2020.

25. The Court thanks the Committee comprising Justice S. P. Garg, a former Judge of this Court and Ms. Kanwaljeet Deol, IPS former DG (Investigation), NHRC for conducting a thorough enquiry and submitting a comprehensive report containing useful suggestions for improving the

system and putting in place a series of steps that can prevent recurrence of such incidents.

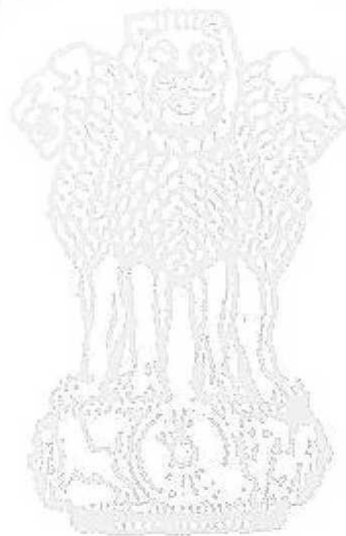
S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 12, 2019

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HIGH COURT OF DELHI



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