

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 21st OF APRIL, 2022

CRIMINAL APPEAL No. 379 of 2022

Between:-

AJAY SAHU
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**....APPELLANT**

***(BY SHRI SANKALP KOCHAR, ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THR. P.S. MAHILA  
THANA DISTT. CHHINDWARA (MADHYA PRADESH)**
- 2. VICTIM A S/O NOT MENTION OCCUPATION: NILL NOT  
MENTION (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI S.K. SHRIVASTAVA, GOVERNMENT ADVOCATE)***

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*This appeal coming on for hearing this day, the court  
passed the following:*

**JUDGMENT**

This appeal is filed by the applicant Ajay Sahu S/o Shri  
Ramesh Kumar under Section 14(A) of Scheduled Caste and

Scheduled Tribe (Prevention of Atrocities) Amendment Act, 1989 as amended upto date.

2. Case Crime No.05/2021 is registered at Police Station A.J.K., District Chhindwara (M.P.) for offence under Section 376(1), 294, 323, 506 of IPC and Section 3(2)(va), 3(1)(w)(i) (ii) of SC/ST, Act 1989. Date of arrest is 13.11.2021.

3. It is submitted that the appellant is innocent, he be enlarged on bail. DNA report is negative, inasmuch as Forensic Science Laboratory has opined that since sample of the fetus was preserved in Formalin Saline, therefore, DNA testing is not possible.

4. In this regard, I have perused the report dated 20.04.2022 forwarded by Shri Umesh Joga, Additional Director General of Police, Jabalpur, Zone Jabalpur. It is evident from the report that Civil Surgeon of the Hospital Dr. Shikhar Surana had earlier given a casual report saying that sample was preserved in the Formalin at the hospital as it is available in the OT. This opinion has been changed by the Civil Surgeon which clearly points out that Civil Surgeon is guilty of furnishing incorrect information to the High Court. Vide report dated 24.03.2022 forwarded to the D.S.P. Women

Safety, Chhindwara vide letter No. का.प्र./2022/830 wherein he mentioned as under -

“हालांकि एम.एल.सी. करने वाले चिकित्सक ने इसे नॉर्मल स्लाईन में प्रिजर्व करके भेजने हेतु लेख किया है। परंतु ऑपरेशन थियेटर में होने के कारण वहां उपलब्ध फारमेलिन में त्रुटिवश प्रिजर्व करके भेज दिया गया है। उक्त प्रकरण में जानकारी के आभाव में स्टॉफ द्वारा किसी गलत नियत से यह कार्य नहीं किया गया है।”

5. Now, Additional Director General of Police has mentioned that he had taken statements of the following persons viz:-

1. डॉ. शिखर सुराना पिता स्व. बी.सी.सुराना, सिविल सर्जन सह अधीक्षक, जिला चिकित्सालय छिंदवाडा – सिविल सर्जन
2. डॉ. दीक्षा लाम्बा, पिता श्री रजनीश लाम्बा, उम्र 27 वर्ष, निवासी—सत्यम शिवम कालोनी, छिंदवाडा – ऑपरेशरकर्ता चिकित्सक
3. डॉ. श्रीमती श्वेता पाठक पति डॉ. श्री शान्तनु पाठक उम्र 45 वर्ष निवासी पता— फैंडस कालोनी, खजरी, छिंदवाडा –ऑपरेशरकर्ता चिकित्सक

4. डॉ. शोभा मोइत्रा, उम्र 62 वर्ष पति का नाम श्री डॉ. देवाशीष मोइत्रा उम्र 62 वर्ष निवासी सिद्धार्थ हॉस्पिटल के उपर, परासिया राड, दिंदवाडा— एच.ओ.डी. एवं ऑपरेशरकर्ता चिकित्सक
5. श्रीमती कविता बेले पिता श्री राम प्रसाद बेले, उम्र 35 वर्ष, पतरा परासिया रोड छिंदवाडा— स्टाफ नर्स
6. राधा बोनिया, पति श्री चैतन कुमार बोनिया, उम्र 33, मता—ग्राम मेढकीताल पोस्ट चंदिया कला तहसील जिला छिंदवाडा— ओ.टी. टेक्नीशियन
7. श्रीमती जयमणी डीवार, पति श्री रवि राज डीवार, उम्र 52 पता— शिक्षक कालोनी (बॉन्डे कालोनी) छिंदवाडा — ओ.टी. सहायक इंचार्ज
8. सुश्री कीर्ति सिंह नरवरिया पिता श्री ओम प्रकाश सिंह नरवरिया, उम्र— 31 वर्ष, उप पुलिस अधीक्षक (महिला सुरक्षा), पुलिस अधीक्षक कार्यालय जिला छिन्दवाडा — विवेचक एवं जप्तीकर्ता
9. आरक्षक 769 मोहन सिंह रघुवंशी पिता श्री आंगद सिंह रघुवंशी, उम्र— 27 वर्ष, पता— रक्षित केन्द्र, छिन्दवाडा— जप्त माल को एफ.एस.एल. भोपाल जमा करने हेतु ले जाने वाला ।

10. आरक्षक 80 राजेन्द्र प्रसाद सिरसाम पिता स्व. पटेल सिंह सिरसाम उम्र- 38 वर्ष नि. रक्षित केन्द्र छिन्दवाडा – स्कूटनि दस्तावेज को एफ.एस.एल. भोपाल जमा कर माल जमा की पावती प्राप्त करने वाला।

6. He has concluded that Staff Nurse Sudha Dhurve admitted that in O.T. Normal and Formalin Saline is available, therefore, there is a possibility that on 13.12.2021 Smt. Radha Boniya (O.T. Technician) might have by fault handed over the container in place of Normal saline filling it with Formalin. After coming into notice of this fact, Hospital Administration is trying to suppress the facts. However, it is evident from the list of persons whose statements were recorded that statement of Sudha Dhurve, Staff Nurse was not recorded. Only statements of 10 persons mentioned above were recorded.

7. Dr. Shikhar Surana, Civil Surgeon admitted that for last one and a half year no Formalin was supplied to Prastuti Vibhag (स्त्री रोग).

8. Dr. Disha Lamba in her statement stated that Dr. Pathak had directed Sister Kavita to prepare a pack of Normal Saline in which product of Conception (fetus) can be kept. On this

instruction, Sister working in Secrolatory had brought a box of Normal Saline in which Dr. Pathak had preserved product of Conception which was handed over to the police authority.

9. Dr. Shweta Pathak has admitted that Radha Bonia, Staff Nurse was helping Kavita. She has categorically mentioned that she had not paid attention as to whether N.S. was filled in the container by Ms. Kavita or Ms. Radha but container given to her by Ms. Kavita was filled with N.S. because it was not emitting any smell of Formalin. That container was handed over by Dr. Diksha Lamba to the police authority.

10. Dr. Shobha Moitra has also given similar statements clearly mentioning that Normal Saline in which fetus was preserved was supplied by Store Keeper Manish to the O.T.. For last two years no Formalin has been supplied to the Operation Theater. As per her memory, in last 12 years, no human organ has been preserved in Formalin.

11. Statements of Smt. Kavita Bele are on record in which she has categorically mentioned that Radha Bonia had filled Normal Saline, it was Radhe who had sealed the container.

12. Statement of Radha Bonia is important, it reads as under-

“श्रीमति राधा बोनिया, पति श्री चैतन कुमार बोनिया, उम्र 33 पता-ग्राम मेढकीताल पोस्ट चंदिया कला तहसील जिला छिंदवाडा के कथन लेख किये गये, जो कि परिशिष्ट-L पेज नं. 44 पर संलग्न है। कथन में बताया कि “यह ओ.टी. टेक्नीशियन के रूप में ओ.टी. में 31 मई 2021 से कार्यरत हूँ। दिनांक 13/12/21 को मेरी डियुटी सुबह 8.00 से 2.00 बजे तक ओ.टी में थी इसी दौरान चॉदनी बेलवंशी नाम की महिला का गर्भपात का केस आया था। जिसे डॉ. मोइत्रा मैडम, डॉ. दीक्षा लाम्बा, डॉ. श्वेता पाठक, सआफ नर्स कविता और इसके द्वारा सम्पन्न कराया गया था। डॉ. श्वेता पाठक ने प्रोडक्ट निकाला था जिसे रखने के लिए इसने खाली कंटेनर उपलब्ध कराई थी। फिर श्वेता मैडम ने कहा कि एन. एस. दो तब मैंने 500 एम.एल. वाली एन.एस. की बोतल मैडम को दी थी तब मैडम ने प्रोडक्ट डूबने तक एन.एस. डाली थी जिसे चपडा सील की थी। जिसमें डॉ. डी. लाम्बा मैडम ने हस्ताक्षर किए थे जिसको डी. लाम्बा मैडम ने ओ.टी. के बाहर जाकर पुलिस को सौंपा था।”

13. Reading this statement, it is evident that Ms. Radha Bonia has not admitted that she had filled Formalin in place of Normal Saline. There are no statements of Ms. Sudha

Dhurve which Additional Director General of Police has mentioned that she has admitted that in O.T. Normal and Formalin saline are available.

14. First of all Formalin is not a Saline. Additional Director General of police has not applied himself to the fact situation. It appears that he signed the report and has not taken into consideration the fact that there are no statements of Staff Nurse, Ms. Sudha Dhurve.

15. Accused appellant is a Police Personnel, thus there is good probability of he being shielded by the higher Police Officials for the reason best known to them.

16. It is prima facie apparent that sample is tampered with and only beneficiary from the tempering of the sample is the present appellant. It also appears that now Police Officers are trying to save him.

17. Section 15(A) under chapter IVA of the SC/ST (Prevention of Atrocities) Act, 1989 as amended upto date deals with Rights of Victims and Witnesses. Section 15-A(8) provides as under:-

“(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a

victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including :-

- (a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;
- (b) issuing directions for non-disclosure of the identity and addresses of the witnesses;
- (c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection;

Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint;

**Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court.”**

18. Rule 16 provides for Constitution of State Level Vigilance and Monitoring Committee. Sub Rule 2 of Rule 16 provides that the high power Vigilance and Monitoring Committee shall meet at least twice in a calendar year in the month of January and July to renew the implementation of the provisions of the Act, Relief and Rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, Role of different Officers/Agencies responsible for implementing the provision of the Act and various report received by State Government.

19. Similarly, Rule 17 provides for Constitution of District Level Vigilance and Monitoring Committee.

20. In the present matter it appears that none of the Committees be it State Level Vigilance and Monitoring Committee for a District Level Vigilance and Monitoring Committee have taken pains to do the needful as is provided in Rule 16(2), Rule 17 and Section 15-A(8) of the Act.

21. Appellant should have been transferred out of the local area to a far flung area so that he is not able to influence the witnesses.

22. This Court would have handed over this case to the

Central Bureau of Investigation (CBI) in view of the conduct of the Police Personnel which includes the appellant, Superintendent of Police, Chhindwara, and Additional Director General of Police, Jabalpur but at this distance of time when Civil Surgeon of District Hospital, Chhindwara and concerned Police Personnel have already played their role, and it is not possible to retry the sample, therefore, any indulgence of the CBI prima facie does not appear to be of immediate help in protecting the rights of the victim. Therefore, instead of handing over the investigation to the CBI, it is directed that concerned Officials be transferred specially the appellant to a far flung place in Madhya Pradesh so that he is not able to influence the witnesses as now case is to be decided on its own merits in view of the available ocular evidence.

23. As far as, merits of the present appeal is concerned, it is evident that forensic evidence has already been tampered with and now case is dependent on the ocular evidence, therefore, for the present when the appellant appears to be wielding sufficient influence on various authorities who are supposed to be independent, probability of tampering with the evidence cannot be ruled out thus unless important

prosecution witnesses are examined it cannot be said that the appellant is entitled to be enlarged on bail.

24. Application fails and is dismissed.

25. Let a copy of this order be forwarded by the Registry along with reports dated 01.04.2022 and 20.04.2022 to the State Level Vigilance and Monitoring Committee through the Chief Secretary for taking appropriate action against the delinquent persons within 15 days from today.

Let record be kept in a sealed cover.

**(VIVEK AGARWAL)**  
**JUDGE**

*Tabish*