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Kaushal vs State of Haryana and others

Present: Mr.Bipan Ghai, Sr.Advocate, with
Mr.Paras Talwar, Mr.Deepanshu Mehta
and Mr.Prabhdeep Bindra, Advocates,
for the petitioner
Mr.Neeraj Poswal, AAG, Haryana
Mr.Rana Harjasdeep Singh, DAG, Punjab
Mr.Rajeev Anand, Addl.PP, UT, Chandigarh
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Case heard via video conferencing.

Pursuant to the order dated 2.11.2021, affidavits have been filed by the AIG, Litigation, Bureau of Investigation, Punjab, dated 1.12.2021, as also by the DIG, Law and Order, Haryana, dated 2.12.2021, both of which are ordered to be taken on record.

In the affidavit of the AIG, Punjab, it has been stated that videography of 26542 persons lodged in different jails of Punjab, would become very difficult each time that they are to be taken to the court, though CCTV cameras are installed at the police stations across the State, at the court premises, as also in and around prisons, which can be utilized to determine the departure and arrival timings of any jail inmate whenever he/she is taken to any other place to face court proceedings etc.

In essence, the affidavit of the DIG, Law and Order, Haryana, is to the same effect.

Mr.Ghai, learned Senior Counsel appearing for the petitioner, does not obviously refute that factual position as regards cameras being installed in jail premises, police stations and court premises, but points to Section 41-B of the Cr.P.C., 1973, which reads as follows:-

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“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.”*

Learned Senior Counsel specifically points to Clause (c) thereof to submit that every time that the petitioner (and any other jail inmate) is arrested in the context of any other offence (other than the one in the context of which he is already in jail), he is bound to be informed of his right to name a relative or a friend who would be informed of his arrest (in the context of each new case), with such relative/friend to be obviously so informed accordingly.

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He next points to Section 41-D of the said Code which reads as follows:-

“41D. Right of arrested person to meet an advocate of his choice during interrogation.—When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.”

Hence, in a nutshell, any person, even one who is already lodged in jail in the context of another offence alleged to have been committed by him/her, is bound to be informed of his right to have a lawyer present during part of his interrogation, as also to name a relative/friend who needs to be informed of his arrest in the context of the case for which he is being arrested.

Mr.Ghai also points to Section 54 of the Cr.P.C. which pertains to examination of an arrested person by a Medical Officer/a registered Medical Practitioner if a Medical Officer in the service of the Central or State Government is not available.

Learned Senior Counsel next points to paragraph 22 of the petition, in which allegations of the worst kind are made against the interrogating officers/officials, which are so reprehensible and inhuman, because even if it is a criminal of the worst kind who is involved in such interrogation, no person can be subjected to such depravity.

Paragraph 22 of the petition reads as follows:-

“22. That the incidents that are happening with the petitioner

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inside the jail and during remand are as follows:-

- i) The investigating agency spits on the floor and asks the petitioner to lick it and if the petitioner refuses to do so, then he is forcible made to lick the spit of the police officers.*
- ii) The investigating officers urinates on the face and on the body of the petitioner after removing his clothes.*
- iii) The petitioner is made to be naked throughout the remand and given merciless beatings.*
- iv) Sharp objects are inserted in the private parts of the petitioner.*
- v) The petitioner is given electric shocks behind is ears and on his private parts so that he is tortured badly and even signs of said torture are not openly visible to the ld. Magistrate as well as medical officer.*
- vi) His legs are put in wooden logs and then pulled aside thereby causing damage to his muscle and rollers are rolled over his thighs so that the petitioner feels the worst kind of pain and still there is no visible mark of injury.*
- vii) The petitioner legs are tied with a rope and he is hanged with his head down and this is repeated every day while in police remand.”*

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Needless to say, if a person is found guilty of the commission of any offence, he/she would suffer the consequences thereof, including capital punishment if that is so warranted in any particular case, but nevertheless, the kind of allegations that have been made in paragraph 22 are of the most depraved kind of behaviour, that no human being should either indulge in or be subjected to.

In view of the above, the DGP of Punjab and the DGP of Haryana are both directed to file their own affidavits in reply to the aforesaid allegations and state on affidavit as to why then this court should not direct that videography be conducted of the interrogation of the petitioner, though of course this court is obviously fully aware that an allegation of any kind can be made by an accused person, though there may not be any truth in it.

Yet, it is to be observed that in any civilized society interrogation is now always done under videography to ensure that no inhuman methods of interrogation are resorted to, with it to be further observed by this court that proper methods of investigation and interrogation also result in criminals being convicted and therefore there would be no excuse to say that if interrogation is made subject to videography, it may not have the desired results as regards the guilt or innocence of an accused.

Also, a disclosure statement made in police custody, unless it leads to actual recovery etc., would normally not be admissible in evidence.

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Consequently, looking at the kind of allegations made in paragraph 22 of the petition, which obviously, if the investigating officers are directed to file a reply thereto, would be denied wholly, the DGPs shall state as to why this court should not, at least in appropriate cases, direct that interrogation be conducted under videography, so that neither can such like treatment of accused persons be resorted to, nor would accused persons then be able to make such accusations/allegations.

Adjourned to 7.1.2022.

In the meanwhile, the States shall ensure that the mandatory provisions of Sections 41-B, 41-D and 54 and all other statutory provisions contained in the Cr.P.C., are duly adhered to by the respondents-States not only in respect to the petitioner but also obviously in respect to all persons accused of any crime.

To be shown in the urgent motion list.

3.12.2021
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(AMOL RATTAN SINGH)
JUDGE