

AFR**Court No. - 65****Case :-** CRIMINAL APPEAL No. - 203 of 2022**Appellant :-** Waseem**Respondent :-** State of U.P. and Another**Counsel for Appellant :-** Laxmi Kant Bhatt**Counsel for Respondent :-** G.A.,Alok Kumar Pandey

And

Case :- CRIMINAL APPEAL No. - 1362 of 2022**Appellant :-** Akash**Respondent :-** State of U.P. and Another**Counsel for Appellant :-** Avadh Raj Sharma, Ashvni Mishra**Counsel for Respondent :-** G.A.

And

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 56496 of 2021**Applicant :-** Vivek Singh**Opposite Party :-** State of U.P.**Counsel for Applicant :-** Kunwar Tejandra Bahadur**Counsel for Opposite Party :-** G.A.

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Hon'ble Sanjay Kumar Singh,J.

Issues

1. Since, the issues involved in all the afore-captioned cases relate to mode and manner of recording statements under Section 161 of the Code of Criminal Procedure, herein after referred to as ("Cr.P.C.") of the witnesses in view of Amendment by Act 5 of 2009 (w.e.f 31.12.2009), Act 13 of 2013 (w.e.f from 03.2.2013) and Act 22 of 2018 (w.e.f. 21.4.2018) in Section 161 Cr.P.C., compliance of provisions of sub Section (10) of Section 15A of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, herein after referred to as ("S.C./S.T. Act") and steps to be taken for streamlining the fair investigation, they have been heard analogously and common order is being passed in all the aforesaid cases.

2. For ready reference provisions of Section 161 Cr.P.C. and Sub-Section 10 of Section 15A of SC/ST Act are quoted here in below:-

"161. Examination of witnesses by police:- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than

questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

a *[Provided that statement made under this sub-section may also be recorded by audio-video electronic means.]*

b *[Provided further that the statement of a woman against whom an offence under section 354, section 354-A, section 354-B, section 354C, section 354D, section 376 , c (section, 376A, section 376AB, section 376-B, section 376-C, section 376-D, section 376-DA, section 376 DB), section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.]"*

(a) Inserted by the Code of Criminal Procedure (Amendment) Act (5 of 2009) S.12 (31.12.2009)

(b) Inserted by the Criminal Law (Amendment) Act (13 of 2013) S.15 (3.2.2013)

(c) Substituted by the Criminal Law (Amendment) Act (22 of 2018) S.12 (21.4.2018)

Sub-Section 10 of Section 15A of SC/ST Act

....."(10) All proceedings relating to offences under this Act shall be video recorded.".....

3. Heard Shri. M.C. Chaturvedi, learned Additional Advocate General and Shri Shiv Kumar Pal, learned Government Advocate assisted by Shri J.K. Upadhyay, learned Additional Government

Advocate representing the State, learned counsel for the appellant/applicant appearing in all the afore-captioned cases and learned counsel appearing on behalf of complainant/victim in Criminal Appeal No. 203 of 2022.

Facts of Criminal Appeal No. 203 of 2022 and the affidavits filed therein

4. The facts that formed the bedrock of this case are that a first Information Report No. 0261/2021 was lodged on 22.08.2021 by the father of the victim against Waseem, Saniv, Nazeev, Shafeek and Nazim under Section 452, 376D, 3(2)(V) S.C./S.T. Act and $\frac{3}{4}$ POCSO Act at police station-Tanda, district-Rampur making allegations of gang rape against them. Victim in her statement under Section 164 Cr.P.C dated 24.08.2021 has also made allegation of gang rape on her by the aforesaid five named accused, but investigating officer ignoring the statement under Section 164 Cr.P.C. of the victim submitted police report under Section 173(2) Cr.P.C./charge sheet dated 20.10.2021 only against Waseem and remaining four accused have been exonerated. On 09.5.2022, learned Additional Government Advocate was directed to file an affidavit disclosing therein the specific grounds on which co-accused Saniv, Nazeev, Shafeek and Nazim have been exonerated by the investigating officer when there is specific allegation of rape against them by the victim in her statement under Section 164 Cr.P.C. On 17.05.2022 when the case was taken up, learned counsel appearing on behalf of the informant apprised the Court that after taking note of the defective investigation conducted by the investigating officer and on putting query in this regard by this Court by order dated 09.05.2022, one Sub-

Inspector Adesh of police station Tanda, district Rampur at the behest of the investigating officer and in collusion with the accused persons is mounting pressure upon the informant and the victim for not pursuing the case and made allegation against the investigating officer. It is also submitted that Sub-Inspector Adesh visited several times to the house of the victim for the said purpose. The victim and her family members are under constant threat of their lives and liberty. The statement of victim under Section 161 Cr.P.C. was not recorded by audio-video means with a view to extend undue favour to the accused persons, whereas provisions of recording the statement under Section 161 Cr.P.C. by audio-video means was inserted by the Act No. 5 of 2009 with effect from 31.12.2009 and similar provision has also been provided under sub Section (10) of Section 15A of the S.C./S.T. Act, but the aforesaid mandatory provisions have not been complied with. In view of the above, informant and victim were given opportunity to file their respective affidavits. The Superintendent of Police, Rampur, Dharma Singh Marchal, the Investigating Officer of this case and Sub-Inspector Adesh of police station Tanda, District Rampur were also directed to appear in person before this Court on 26.05.2022 and to file their personal affidavit in the matter. Superintendent of Police, Rampur was also directed to file an affidavit indicating that in the last one year in how many cases amended provisions of Section 161 Cr.P.C. and provisions of sub Section (10) of Section 15A of S.C./S.T. Act have been complied with in true sense and in how many cases, the said provisions have not been followed.

5. Shri Virender, son of the complainant has filed his

personal affidavit dated 22.5.2022 mentioning inter alia that investigation has been conducted with ulterior motive in collusion with the accused persons. Sub Inspector Adesh Kumar is closely associated with Aquil, who is father of the co-accused Nazeev, who used to pressurize the informant and his son to compromise the matter. On 26.05.2022 Mr. Ashok Kumar, the Superintendent of Police, Rampur, Mr. Dharm Singh Marchhal, Additional Superintendent of Police, the investigating officer of the case and Mr. Adesh Kumar, Sub-inspector of Police station Tanda, district Rampur appeared before this Court and they have filed their separate personal affidavit. The investigating officer in paragraph Nos. 3 and 4 of his affidavit has mentioned that statement of the victim was recorded under Section 161 Cr.P.C. by audio and video clippings, and the same was sent to the Court on 26.05.2022. The pen drive of the audio and video clippings, was summoned from the court concerned and it was displayed in the presence of the learned counsel for the parties and it was found that the statement of the victim recorded through audio video means does not match with the contents of the statement recorded under Section 161 Cr.P.C.

6. He also tendered his unconditional and unqualified apology for submitting police report under Section 173(2) Cr.P.C. ignoring the statement under Section 164 Cr.P.C. of the victim.

7. Sub-Inspector Adesh Kumar in his affidavit has denied the allegations levelled against him by the victim and stated that a bald allegation has been levelled against him without there being any substance or evidence to this effect. However, on putting query by this Court, he has admitted that he is in touch

with Aquil, who is the father of accused Nazeev.

8. Mr. Ashok Kumar Singh, the Superintendent of Police, Rampur has come up with a stand in his affidavit that he has joined the post of Superintendent of Police, Rampur on 17.04.2022. He, vide order dated 20.5.2022, has instituted an enquiry against the Sub-Inspector Adesh Kumar and Circle Officer, Swar, district Rampur has been appointed as Enquiry Officer. Similarly by separate order dated 20.5.2022 he has also directed to initiate proceeding against the then investigating officer and order for further investigation under Section 173(8) has also been passed on 20.5.2022 by him to ensure fair investigation in the matter. So far query of this Court as mentioned above, it is pointed out that in the last one year total 74 cases for the offence under the SC/ST Act were registered in district Rampur, out of which, in 30 cases the aforesaid amended provisions were followed and in remaining 44 cases the aforesaid amended provisions were not followed. In this regard, the Superintendent of Police, Rampur has tendered his unconditional apology and undertakes before this Court that in future he will be more careful and vigilant so that no such mistake may occur. It is also pointed out that in the year 2021, total 245 criminal cases (against women) related to sexual offences were registered in the district Rampur, out of which in 241 cases, the amended provisions of Section 161 Cr.P.C. have been complied with and in 3 cases, victim are not traceable and in one case victim who was a little girl was found dead.

9. On putting query about the cases in which proceedings have been video recorded, whether the audio/video recordings

of the victims have been submitted before the concerned court below along with the charge sheet or not, he prays for and was allowed time to file affidavit in this regard.

10. Pursuant to the order of this Court dated 26.5.2022, Shri Ashok Kumar, presently posted as Superintendent of Police, Rampur has filed his personal affidavit dated 07.07.2022 mentioning therein that "in the cases in which audio/video recordings of the victim were made, in all the cases same were sent to the court concerned along with charge-sheet".

Facts of Criminal Appeal No. 1362 of 2022 and the affidavits filed therein

11. In short compass, the facts of this case are that first Information Report No. 0121/2020 was lodged on 22.07.2020 by the brother of the victim against five accused persons, namely, Gaurav, Govind, Bhola, Neeraj and Akash for the offence under Sections 328, 342, 366A, 376D, 506 IPC and Sections 3/4 POCSO Act at police station-Gabhana, district-Aligarh making allegation of gang rape against them. During investigation the statement of the victim under Section 161 Cr.P.C. was recorded on 28.07.2020. Thereafter her statement under Section 164 Cr.P.C. was recorded by the Magistrate concerned on 17.08.2020 and in both the statements, she has made specific allegation of gang rape against all the five accused persons named in the F.I.R. Thereafter, the Investigating Officer, after getting the second statement (*Majeed Bayan*) under Section 161 Cr.P.C. of the victim recorded on 27.10.2020 on his own through woman Constable

No. 2083 Madhuri, exonerated the co-accused Gaurav, Bhola and Neeraj on the basis of alleged second statement under Section 161 Cr.P.C. of the victim ignoring her first statement under Section 161 Cr.P.C. and statement under Section 164 Cr.P.C. and submitted charge-sheet dated 08.11.2020 and 09.4.2021 under Sections 342, 376D, 506 IPC and Sections 3(2)5 S.C./S.T. Act only against Govind and Akash (appellant) respectively.

12. Record indicates that the investigating officer in order to nullify the statement under Section 164 Cr.P.C. and with a view to extend undue favour to co-accused Gaurav, Bhola and Neeraj got the second statement (*Majeed Bayan*) of the victim recorded through woman Constable in violation of 1st proviso to Section 161(3) Cr.P.C. as well as the provisions of sub-Section 10 of Section 15A of the SC/ST Act wherein it is provided that "all the proceedings under this Act shall be video recorded." Since the Court noticed that such allegations are constantly coming before the Court in several cases, therefore, by order of this Court dated 24.05.2022, the Senior Superintendent of Police, Aligarh and the investigating officer concerned were directed to appear in person before this Court. The investigating officer was directed to show cause by filing his personal affidavit as to why the statement of victim has not been recorded by audio-video means. It was further directed that in case statement of victim has been recorded by audio-video means, the same shall be produced before this Court. The Senior Superintendent of Police, Aligarh was also directed to file his personal affidavit indicating that in last one year in how many cases amended provisions of Section 161 Cr.P.C. and

provisions of sub-Section 10 of Section 15A of the SC/ST Act have been complied with in true sense and audio-video recordings of such statements have been submitted along with police report to the concerned court below and in how many cases, the said provisions have not been followed.

13. In compliance of the order of this Court dated 24.5.2022, following affidavits have been filed:

(i) Personal affidavit dated 07.07.2022 of Kalanidhi Naithani, Senior Superintendent of Police, Aligarh.

(ii) Personal affidavit dated 11.07.2022 of Shri Devi Gulam, presently posted as Circle Officer, Bansi, district Siddharth Nagar, the first investigating officer of the case.

(iii) Personal affidavit dated 11.7.2022 of Shri Vikas Kumar, presently posted as Assistant Superintendent of Police/Circle Officer, Gabhana, district Aligarh, the second investigating officer of the case

(iv) Personal affidavit dated 11.07.2022 of Shri Karmveer Singh, presently posted as Circle Officer, Dataanj, district Budaun, the third investigating officer of the case.

14. Referring to the contents of the affidavit of Shri Kalanidhi Naithani, the Senior Superintendent of Police, Aligarh it is pointed out by Mr. M.C. Chaturvedi that Shri Kalanidhi Naithani has joined on 27.3.2021 as Senior Superintendent of Police, Aligarh and by then the investigation of the present case had already concluded. However, on going through the record, further investigation of the case has been ordered on 26.6.2022.

15. In compliance of the order of this Court dated 24.5.2022,

the Senior Superintendent of Police, Aligarh has prepared a chart for the last one year from 25.5.2021 to 24.5.2022, which shows that out of total **12689** criminal cases registered in different police stations of District Aligarh, only in **1959** criminal cases audio/video recording were made and in **10730** cases audio/video recording were not made. The chart further depicts that between 25.5.2021 and 24.5.2022, total **1250** cases against women were registered and in all the cases audio/video recordings were made. Out of the aforesaid cases, **277** cases relates to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act in which audio/video recordings were made and sent to the court concerned along with the police report.

16. The Senior Superintendent of Police, Aligarh mentioned in his affidavit that on 22.6.2022 he has issued D.O. Letters to all the police officers of the district mentioning therein to strictly comply with the amended provisions of Section 161(3) Cr.P.C. as well as Sub-Section 10 of Section 15-A of the SC/ST Act. He has also issued letters dated 1.12.2021 and 01.6.2022 to all the Circle Officers as well as Station House Officers/Station Officers of the district to strictly comply with the Circulars dated 29.10.2021 as well as 25.5.2022 issued by the Director General of Police, U.P. Lucknow. He has also organized a district level workshop/seminar on 03.7.2022 to make the police officers aware about the amended provision of Section 161 Cr.P.C. as well as sub-section 10 of Section 15-A of SC/ST Act.

17. Shri Devi Gulam, who was the first investigating officer of the case has filed his personal affidavit tendering his unconditional and unqualified apology mentioning inter alia that

the statement of victim girl was recorded by lady constable but audio/video recording of the same was not prepared.

18. Shri Vikash Kumar, who was the second investigating officer of case, in his affidavit has stated that he has taken over the investigation of this case on 24.9.2020. Prior to his taking over investigation, statement of the victim under Section 161 Cr.P.C. was already recorded on 28.7.2020 and her statement under Section 164 Cr.P.C. was recorded on 17.8.2020.

19. Apart from several reasons justifying his action, it is further mentioned in the affidavit that since there were material contradictions in the statements of the victim recorded under Section 161 and 164 Cr.P.C. he got the Majeed Bayan (second statement) of the victim recorded through a lady constable on 27.10.2020, but audio/video recording of the same was not made, for which he tendered his unconditional and unqualified apology.

20. It is also mentioned in the affidavit that charge sheet against Govind was submitted by him on 08.11.2020 and the investigation against co-accused Akash was pending. Thereafter, the investigation of this case was transferred to another Investigating Officer.

21. Shri Karmveer Singh who was the third investigating officer of the case has mentioned in his affidavit that after taking over investigation of the case he perused the entire case diary and started investigation of the case. Since, there was sufficient evidence showing prima facie commission of cognizable offence against accused-Akash, he accordingly submitted charge sheet against him under Sections 342, 376D,

506 IPC and 3(2)5 of SC and ST Act on 09.4.2021 and concluded the investigation.

22. Perusal of the affidavits of Shri Kalanidhi Naithani, Senior Superintendent of Police, Aligarh, Shri Devi Gulam, the first investigating officer, Shri Vikas Kumar, the second investigating officer and Shri Karmveer Singh, the third investigating officer of the case, it is crystal clear that compliance of amended provisions of Section 161(3) Cr.P.C. as well as Sub-Section 10 of Section 15-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has not been made in the instant case as well as in numerous cases mentioned in the affidavit of the SSP, Aligarh.

Facts of Criminal Misc. Bail Application No. 56496 of 2021, affidavits filed therein and relevant Government Orders

23. In nutshell, the facts of this case are that first Information Report No. 0458/2021 was lodged on 11.06.2021 by the mother of the victim against the applicant Vivek Kumar under Sections 363, 366, 504, 507 I.P.C. at police station-Nawabganj, district-Prayagraj inter alia with the allegations that the applicant has developed friendship with her daughter through mobile and on the pretext of marriage, the applicant took certain obscene photographs of the victim and on the basis thereof, he used to blackmail and make sexual relation with her. He also threatened to get the aforesaid photographs viral, in case the matter is reported. On 06.6.2021 the applicant by blackmailing, enticed her daughter away. Thereafter, victim in her statement under Section 164 Cr.P.C. apart from making

allegations of rape against the applicant, has also disclosed the name of Bachanu and Jagan Nath to have facilitated in the commission of crime. From the perusal of record, it is revealed that after recording the statement of the victim under Section 164 Cr.P.C. on 25.6.2021, the investigating officer SI Ashish Kumar Singh has recorded the second statement (Majeed Bayan) of the victim on his own on 26.7.2021 and on the basis of the said statement, he exonerated accused Bachanu and Jagan Nath ignoring the statement of the victim under Section 164 Cr.P.C. and submitted charge sheet only against the present applicant Vivek Singh.

24. By order dated 04.05.2022, investigating officer was directed to appear in person before this Court and to file his personal affidavit to show cause as to how he has recorded the second statement (Majeed Bayan) of the victim in violation of amended provisions of Section 161 Cr.P.C. as well as guidelines issued by the Government vide circular letter dated 01.09.2021 in compliance of order of this Court dated 11.08.2021 passed in Criminal Misc. Bail Application No. 22430 of 2021 (Bulle Vs. State of U.P.).

25. Pursuant to order dated 04.05.2022, Shri Ashish Kumar, the investigating officer has filed his personal affidavit mentioning that he was not aware about the directions contained in the order of this Court in Criminal Misc. Bail Application No. 22430 of 2021 (Bulle Vs. State of U.P.) as well as circular issued pursuant thereto. However, he tenders his unqualified apologies.

26. Shri Ajay Kumar, then Senior Superintendent of Police, Prayagraj has also filed his affidavit mentioning certain steps

taken in order to ensure the fair and impartial investigation within the parameter of Section 161 Cr.P.C. enclosing the copy of circular letter dated 01.09.2021 of the State Government, letters dated 05.09.2021, 06.09.2021 and 20.05.2022 of Senior Superintendent of Police, Prayagraj, letters dated 29.10.2021 and 18.05.2022 of Director General of Police. It is also mentioned that pursuant to the order of this Court dated 04.5.2022, he has directed the Superintendent of Police, Gangapar to enquire into the matter. In the enquiry, it was found that second statement (*Majeed Bayan*) of the victim, after recording the statement under Section 164 Cr.P.C. of the victim, was recorded in contravention of the Circular dated 01.9.2021. Thereafter, SI Ashish Kumar Singh (investigating officer) of this Case has been placed under suspension vide order dated 20.5.2022 of Senior Superintendent of Police, Prayagraj.

27. Pursuant to the order of this Court dated 24.5.2022, compliance affidavit dated 10.07.2022 on behalf of State of U.P. sworn to by Shri Awanish Kumar Awasthi, Additional Chief Secretary (Home), Government of U.P., Lucknow has been filed.

28. Referring to the contents of the affidavit of Shri Awanish Kumar Awasthi, Shri M.C. Chaturvedi, learned Additional Government Advocate submits that pursuant to the order of this Court dated 11.8.2021 in Criminal Misc. Bail Application No. 22430 of 2021 (Bulle Vs. State of U.P.) the State Government had earlier issued Circular Letter No. 820रिट/छ :-पु0-3-21-2(279)पी/2021 dated 01.9.2021 directing all the Police Commissioners/Senior Superintendent of Police/Superintendent of Police of Uttar Pradesh to bring the

guidelines mentioned in the Circular in the notice of their subordinates and to ensure strict compliance of the Circular in letter and spirit.

29. The aforesaid Circular Letter No. 820रिट/छ :-पु0-3-21-2(279)पी/2021 dated 01.9.2021 reads as under:

फैक्स / कोर्टकेस

संख्या-820 रिट / छ:-पु0-3-21-2 (279)पी/2021

प्रेषक,

अवनीश कुमार अवस्थी,

अपर मुख्य सचिव,

उत्तर प्रदेश शासन ।

सेवा में,

समस्त पुलिस आयुक्त /

वरिष्ठ पुलिस अधीक्षक / पुलिस अधीक्षक,

उत्तर प्रदेश ।

गृह (पुलिस) अनुभाग-3

लखनऊ: दिनांक: 01 सितम्बर 2021

विषय:- क्रिमिनल मिस० बेल अप्लीकेशन संख्या-22430 / 2021 बुल्ले पुत्र राजेन्द्र मांगटा बनाम उ०प्र० राज्य में मा० उच्च न्यायालय, इलाहाबाद द्वारा पारित आदेश दिनांक 11.08.2021 के क्रम में द०प्र०सं० की धारा-161 (3) के अनुपालन के संबंध में।

महोदय,

उपर्युक्त विषयक प्रकरण के संबंध में मुझे यह कहने का निदेश हुआ है कि क्रिमिनल मिस० बेल अप्लीकेशन संख्या-22430/2021 बुल्ले पुत्र राजेन्द्र मांगटा बनाम उ०प्र० राज्य में मा० उच्च न्यायालय, इलाहाबाद द्वारा दिनांक

11.08.2021 को आदेश पारित करते हुए द०प्रसं० की धारा-161 (3) के प्रविधानों का अनुपालन सुनिश्चित करने के निर्देश दिये गये हैं।

2- प्रश्नगत मामले में मा० उच्च न्यायालय, इलाहाबाद द्वारा दिनांक 11.08.2021 को पारित आदेशों का क्रियात्मक अंश निम्नवत् हैं-

It would be relevant to mention that 1st and 2nd proviso to Section 161 (3) Cr.P.C had been inserted by Act 5 of 2009 (w.e.f. 31.12.2009) and Act 13 of 2013 (we.f. 2.03.2013) respectively, but this Court has been noticing that in majority of cases, the said provisions are not being followed by the Investigating Officers in true sense and practice of recording second statement under section 161 Cr.P.C. of the victim/prosecutrix after recording her statement under Section 164 Cr.P.C. is on higher side and in some cases, conclusions are drawn by the Investigating Officer on the basis of second statement under section 161 Cr.P.C., ignoring the statements under Section 164 Cr.P.C. This Court also found that it is common argument on behalf of the prosecution in all such cases that there is no bar for recording the second statement under Section 161 Cr.P.C. of the victim/prosecutrix. In the opinion of this Court, the statement under Section 164 Cr.P.C, will prevail over the statement under Section 161 Cr.P.C.

High Courts are sentinels of justice with extraordinary powers to ensure that rights of citizen are duly protected. Since Mr. Chaturvedi has fairly conceded that 1st and 2nd proviso to Section 161 (3) Cr.P.C. has not been followed in this case and assured this Court that higher authority will certainly look into the matter, therefore this Court is not taking any action leaving it upon the authorities concerned to take appropriate action in the matter. In view of above, personal appearance of Mr. Raj Kishore (Investigating Officer of this case) is dispensed with.

Exemption application No. 5 of 2021 dated 09.08.2021 is disposed of.

Let a copy of this order be sent to the Director General of Police, U.P., Lucknow and Principal Secretary, Home, U.P. Lucknow within two weeks, who shall issue necessary directions/guidelines to all the Senior

Superintendent of Police regarding compliance of statutory provisions provided in 1st and 2nd proviso to Section 161 (3) Cr.P.C. within two months.

4- कृपया उपरोक्त आदेशों से अपने समस्त अधीनस्थों को अवगत कराते हुए इनका कड़ाई से अनुपालन सुनिश्चित करने का कष्ट करें।

संलग्नक:- यथोक्त ।

भवदीय,

(अवनीश कुमार अवस्थी)

अपर मुख्य सचिव

30. Further, in compliance of the directions of the Coordinate Bench of this Court in Criminal Misc. Application No. 31695 of 2021 (Dharmendra alias Patra Vs. State of U.P.), the Director General of Police , U.P. Lucknow had already issued Circular Letter No. 41 of 2021 dated 29.10.2021 directing all the investigating officers that in the cases against women in which the statement of the victim has been recorded under Section 164 Cr.P.C. and in case of there being variations in the statements of the victim under Sections 161 and 164 Cr.P.C., the investigating officer shall not put any question in supplementary statement (Majeed Bayan) of the victim, which frustrate and negate the statement of the victim under Section 164 Cr.P.C. The Circular Letter No. 41 of 2021 reads as under :

"विषय:- मा० उच्च न्यायालय में योजित कि० मिस बेल एप्लीकेशन सं०: 31695 / 2021 धर्मन्द्र बनाम उ०प्र० राज्य में मु०अ०सं० 30/2019 धारा 376 / 452 / 500 भादवि थाना बरिया जनपद अलीगढ़ से सम्बन्धित पारित आदेश दिनांकित 01.10.2021 में दिये गये

निर्देशों के अनुपालन के सम्बन्ध में आवश्यक दिशा-निर्देश।

प्रिय महोदय / महोदया,

मा० उच्च न्यायालय इलाहाबाद द्वारा क्रि० मिस बेल एप्लीकेशन सं०:31695/2021 धर्मेन्द्र बनाम उ०प्र० राज्य में पारित आदेश दिनांक 01.10.21 में अंकित किया है कि विवेचना के दौरान विवेचकों द्वारा धारा 161 दं०प्र०सं० के अन्तर्गत दर्ज किये गये पीड़िता के बयान तथा तत्कम में धारा 164 दं०प्र०सं० के अन्तर्गत न्यायिक मजिस्ट्रेट द्वारा लेखबद्ध किये गये बयान में भिन्नता होने की दशा में विवेचकों द्वारा इन विभिन्नताओं के सम्बन्ध में पीड़िता की पुनर्परीक्षा कर धारा 161 दं०प्र०सं० के अन्तर्गत अनुपूरक बयान दर्ज किये जाने पर अप्रसन्नता व्यक्त की है।

मा० उच्च न्यायालय द्वारा यह मत व्यक्त किया गया है कि धारा 161 दं०प्र०सं० तथा धारा 164 दं०प्र०सं० के बयानों में भिन्नता की दशा में विवेचक द्वारा पुनर्परीक्षा के माध्यम से दोनों बयानों में व्यक्त की गयी भिन्न-भिन्न स्थितियों के सम्बन्ध में प्रश्न पूछे जाने से धारा 164 दं०प्र०सं० के अन्तर्गत अंकित कथन की प्रामाणिकता कम हो जाती है तथा न्यायिक मजिस्ट्रेट द्वारा लेखबद्ध किये गये कथन साक्षिक मूल्य प्रभावित होता है, जो किसी भी प्रकार से विवेचना का उद्देश्य नहीं है।

मा० न्यायालय द्वारा पारित आदेश का प्रमुख अंश निम्नवत् है-

9. In the matters in hand the prosecutrix/victim after giving her statement under Section 161 of the Code levelling allegations of rape against the accused, has given up the same in her statement recorded under Section 164 of the Code. The Investigating Officer then records the statement of the prosecutrix/victim again under Section 161 of the Code and puts specific questions to her with regards to the said variations in her statements and records her answers to the said questions.

10. The said action of the Investigating Officer is not appreciable. Putting questions to the prosecutrix/victim with regards to the change in version by her in the statements under Section 161 of the Code and in the

statement under Section 164 of the Code, clearly shows disrespect to the courts who have recorded the statements under Section 164 of the Code. The said statements under Section 164 of the Code recorded by Judicial Magistrates is in discharge of their judicial functions and the act of recording of the said statements was a judicial act which was performed by a public servant while discharging his judicial functions. The said document is relevant under Section 35 of Indian Evidence Act and also under Section 72 of Indian Evidence Act and, as such, assumes the character of being a public document.

11. The statement made by the prosecutrix/victim under section 164 of the Code before the Magistrate stands on a high pedestal and sanctity during the course of investigation than that of her statement recorded under section 161 of the Code by the Investigating Officer.

12. Though the Investigating Agency has unfettered powers to investigate a matter, but they cannot on their whims and fancy adopt a procedure which would clearly be challenging the sanctity of an act done by a court of law while discharge of a judicial function. By putting questions to the prosecutrix/victim in her second statement under Section 161 of the Code after recording of the statement under Section 164 of the Code relating to the different versions in the said two statements, the Investigating Officer cannot frustrate the same and also make an attempt to make the purpose of the said exercise look a farce.

13. The act of putting specific questions pertaining to the variations in the said two statements by the Investigating Officer is viewed with an impression of clearly challenging the authority of a judicial act. The Investigating Officers have clearly exceeded their jurisdiction by proceedings to investigate in such a manner. The same appears to be with a sole purpose to frustrate the statements recorded by a Magistrate.

14. Even the Uttar Pradesh Police Regulations while dealing with the particular duties of Police Officers for "Investigations" in its Chapter XI do not in any manner authorize Investigating Officers to act as such. Although Paragraph-107 of the same states that the Investigating Officer would not act as a mere clerk while recordings of statements but has to observe and infer. Paragraph-109 empowers for recording of supplementary statements. But the manner in which

supplementary statements in the present matters have been recorded clearly show that they are for the sole purpose to put the variations to the witnesses and record the same.

15. This court thus finds that the manner in which the supplementary statements are recorded and the purpose for recording of the same is only and solely for frustrating the purpose of statements recorded under Section 164 of the Code and to negate and defeat the earlier statement of the prosecutrix/victim given under section 164 of the Code whether it is in favour or against the accused otherwise the sanctity of the statement under section 164 of the Code will loose its value. The same is neither the intent of Investigation nor is the purpose of it.

16. The Director General of Police, Uttar Pradesh Lucknow is directed to look into the said new trend of Investigation as adopted and issue suitable guidelines for such matter so that the sanctity and authority of judicial proceedings are maintained and they should not be frustrated by any act done during Investigation.

17. The Registrar (Compliance) of this Court and the learned counsels for the State are directed to communicate this order to the Director General of Police, Uttar Pradesh Lucknow for its compliance and necessary action within a period of one month from today and submit a compliance report within one week thereafter.

माननीय उच्च न्यायालय इलाहाबाद द्वारा पारित उपरोक्त आदेश के दृष्टिगत समस्त विवेचकों को यह जाता है कि महिलाओं के विरुद्ध अपराध के जिन प्रकरणों में पीड़िता का बयान धारा 164 दं०प्र०सं० के अन्तर्गत न्यायिक मजिस्ट्रेट द्वारा लेखबद्ध कर लिया गया हो, उन प्रकरणों में पीड़िता के पहले लिये गये धारा 161 दं०प्र०सं० तथा धारा 164 दं०प्र०सं० के बयानों में भिन्नता होने की दशा में विवेचक द्वारा पीड़िता की पुर्नपरीक्षा कर इस प्रकार के प्रश्न नहीं पूछे जायेंगे, जिससे न्यायिक मजिस्ट्रेट द्वारा धारा 164 दं०प्र०सं० के अन्तर्गत लेखबद्ध किये गये बयान की प्रमाणिकता कम हो जाये अथवा उनका साक्ष्यिक मूल्य प्रभावित होता हो।

में स्पष्ट करना चाहूँगा कि मा० उच्च न्यायालय इलाहाबाद की अपेक्षानुसार आप अपने निकट पर्यवेक्षण में समस्त विवेचकों को

निर्देशित करें कि वह मा० न्यायालय द्वारा दिये गये निर्देशों का अक्षरशः पालन करेंगे।

मा० उच्च न्यायालय इलाहाबाद द्वारा दिये गये उक्त निर्देशों एवं धारा 164 ना०ि०ला० के अन्तर्गत बयान लेखबद्ध कराने के सम्बन्ध में मुख्यालय स्तर से निर्गत निर्देशों का पालन कराये जाने हेतु एक कार्यशाला का आयोजन कर इस सम्बन्ध में सर्वसंबंधित को विस्तार से अवगत कराते हुये निर्देशों का कड़ाई से अनुपालन कराना सुनिश्चित करें।"

31. Earlier, the Director General of Police, Uttar Pradesh had also issued Circular letter dated 18/20.5.2022 directing therein that in spite of the directions of the Director General of Police, it has come to his notice that the directions given by the High Court are not being complied with. The Circular reads as under:

पत्रांक: डीजी-दस-वि०प्र०-रिट-मिस (120)/2022/1646 दिनांक: मई 18, 2022

1- पुलिस आयुक्त,
लखनऊ/गौतमबुद्धनगर/कानपुर नगर/वाराणसी।

2- समस्त पुलिस उप महानिरीक्षक/
वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,
उत्तर प्रदेश।

विषय:- डीजी परिपत्र संख्या 41/2021 दिनांकित 29.10.2021 द्वारा विवेचना के दौरान पीड़िता के धारा 164 सी.आर.पी.सी. के अन्तर्गत बयान दर्ज किये जाने के उपरान्त विवेचक द्वारा पुनः धारा 161 सी.आर.पी.सी. के अन्तर्गत बयान दर्ज किये जाने के सम्बन्ध में दिये गये निर्देशों का कठोरता से अनुपालन किये जाने के संबंध में।

कृपया पत्र के साथ संलग्न अपर मुख्य सचिव उ०प्र० शासन के द्वारा निर्गत शासनादेश संख्या-820 रिट-/छः-पु०-3-21-2(279)पी/2021 दिनांकित 01.09.2021 तथा डीजी परिपत्र संख्या-41/2021 का संदर्भ ग्रहण करें जिसके द्वारा मा० उच्च न्यायालय इलाहाबाद द्वारा पारित निर्देशों के अनुपालन में विवेचना के दौरान पीड़िता के धारा 164 सी.आर.पी.सी. के अन्तर्गत बयान दर्ज किये जाने के उपरान्त विवेचक द्वारा पुनः धारा 161 सी.आर.पी.सी. के अन्तर्गत बयान दर्ज किये जाने के सम्बन्ध में स्पष्ट

निर्देश निर्गत किये गये हैं।

मा० उच्च न्यायालय के विभिन्न न्यायिक निर्णय के अनुपालन में उ०प्र० शासन तथा पुलिस महानिदेशक उ०प्र० द्वारा स्पष्ट निर्देश निर्गत किये जाने के उपरान्त भी विवेचको द्वारा इसका अनुपालन न किये जाने के तथ्य संज्ञान में आये हैं। मा० उच्च न्यायालय द्वारा क्रिमि०मिस०बेल प्रार्थना पत्र सं० 56496/2021 विवेक सिंह बनाम उ०प्र० राज्य में पारित आदेश दिनांकित 04.05.2022 में इस सम्बन्ध में निम्नवत टिप्पणी की गयी है-

It is pointed out that earlier this Court vide order dated 11.8.2021 passed in Criminal Misc. Bail Application No. 22430 of 2021 (Bulle Vs. State of U.P.) has directed the state Government to ensure fair investigation in all the matters and issue appropriate directions to all the investigating officers regarding mode and manner of recording the statement under Section 161 Cr.P.C.

It has been informed that pursuant to the said order, the State Government has issued Circular letter No. 820..... directing all the Police Commissioner/Senior Superintendent of Police/Superintendent of Police of Uttar Pradesh to bring the guidelines mentioned in the Circular in the notice of their subordinates and to ensure strict compliance of the Circular letter, which was issued in compliance of the order of this Court dated 11.8.2021 passed in Criminal Misc. Bail Application No. 22430 of 2021 (Bulle Vs. State of U.P.).

It is very disturbing to note that the investigating officer of this case namely SI Ashish Kumar Singh of police station Nawabganj, district Prayagraj has recorded the second statement under Section 161 Cr.P.C. (Majeed Bayan) of the victim on 26.7.2021 after the statement of the victim under Section 164 Cr.P.C. was recorded on 25.6.2021, which is in the teeth of the Circular letter dated 01.9.2021 issued by the State Government as well as in violation of the provisions of Section 161 Cr.P.C.”

उ०प्र० शासन तथा पुलिस महानिदेशक द्वारा स्पष्ट निर्देश निर्गत किये जाने के उपरान्त भी विवेचको द्वारा उनका अनुपालन न किये जाने पर मा० उच्च न्यायालय द्वारा असंतोष व्यक्त किया गया है।

उपरोक्त के क्रम में आप सब को पुनः निम्नवत निर्देशित किया जाता है-

1. शासनादेश संख्या-820 रिट-/छः-पु०-3-21-3(279)पी/2021 दिनांकित

01.09.2021 तथा डीजी परिपत्र संख्या-41/2021 के द्वारा निर्गत किये गये निर्देशों से अपने जनपद/कमिश्नरेट में तैनात सभी विवेचकों को अवगत कराते हुए इन निर्देशों को कड़ाई से अनुपालन हेतु आवश्यक निर्देश निर्गत करें।

1. मा० उच्च न्यायालय द्वारा पीड़िता के धारा 164 सी.आर.पी.सी. के अन्तर्गत बयान दर्ज किये जाने के उपरान्त विवेचक द्वारा पुनः धारा 161 सी.आर.पी.सी. के अन्तर्गत बयान दर्ज किये जाने के सम्बन्ध में दिये गये निर्देशों से सभी विवेचकों तथा पर्यवेक्षण अधाकिरियों को अपराध गोष्ठी में अवगत करायें तथा इस सम्बन्ध में जनपद स्तर पर कार्यशाला आयोजित कराते हुए सभी विवेचकों को जागरूक करें।
2. यदि किसी अधिकारी या कर्मचारी द्वारा निर्देशों के अनुपालन में शिथिलता बरती जाये तो उसके विरुद्ध नियमानुसार कार्यवाही करें।

अपठनीय

(देवेन्द्र सिंह चौहान)
महानिदेशक
उत्तर प्रदेश।

32. It is submitted that pursuant to the order of this Court dated 11.8.2021 passed in Criminal Misc. Bail Application No. 22430 of 2021 (Bulle Vs. State of U.P.), the Additional Chief Secretary (Home), Government of U.P., Lucknow U.P. had again issued a Government Order dated 10.6.2022 to the Director General of Police and Additional Director General of Police, Crime, U.P. and all the Police Commissioners/SSPs/SPs in Uttar Pradesh directing them to comply with the amended provisions of Section 161 of Code of Criminal Procedure. The Government Order dated 10.6.2022 reads thus:

प्रेषक,

अवनीश कुमार अवस्थी,
अपर मुख्य सचिव,
उत्तर प्रदेश शासन।

सेवा में,

1. पुलिस महानिदेशक,
उत्तर प्रदेश, लखनऊ।
पुलिस मुख्यालय,

2. अपर पुलिस महानिदेशक,
अपराध,

उत्तर प्रदेश, लखनऊ।

गृह (पुलिस) अनुभाग-9

लखनऊ: दिनांक

10 जून, 2022

विषय: दण्ड प्रक्रिया संहिता, 1973 की संशोधित धारा 161 का
समुचित अनुपालन किये जाने के संबंध में।

महोदय,

उपर्युक्त विषय के सम्बन्ध में अवगत कराना है कि शासन के संज्ञान में यह तथ्य आया है कि दण्ड प्रक्रिया संहिता, 1973 की संशोधित धारा 161 जो विवेचना के दौरान विवेचक द्वारा बयान अंकित किये जाने की प्रक्रिया वर्णित करता है, के परन्तुकों का अनुपालन कतिपय प्रकरणों में नहीं किया जा रहा है, जिस कारण माननीय उच्च न्यायालय के समक्ष शासन को अपना पक्ष प्रस्तुत करने में कठिनाई का सामना करना पड़ता है।

2- उल्लेखनीय है कि दण्ड प्रक्रिया संहिता, 1973 की संशोधित धारा 161 के परन्तुक निम्नवत है:

“परन्तु यह कि इस उपधारा के अधीन किया गया कथन ऑडियो-वीडियो इलेक्ट्रॉनिक साधनों से भी अभिलिखित किया जा सकेगा।

परन्तु यह और कि किसी ऐसी स्त्री का कथन, जिसके विरुद्ध भारतीय दण्ड संहिता की धारा 354, धारा 354 क, धारा 354 ख, धारा 354 ग, धारा 354 घ, धारा 376 क, धारा 376 क ख, धारा 376 ख, धारा 376 ग, धारा 376 घ, धारा 376 घ क, धारा 376 घ ख, धारा 376 ड या धारा 509 के अधीन किसी अपराध के किए जाने या प्रयत्न किए जाने का अभिकथन किया गया है, किसी महिला पुलिस अधिकारी या किसी महिला अधिकारी द्वारा अभिलिखित किया जा जाएगा।”

3- यह भी उल्लेखनीय है कि उक्त परन्तुक संसद द्वारा महिलाओं के विरुद्ध अपराधों में दुर्भाग्यपूर्ण वृद्धि के कारण सम्मिलित किये गए हैं। वस्तुतः विधायिका की मंशा विवेचकों को ऐसे अपराधों की संवेदनशील प्रकृति के बारे में जगरूक, संवेदनशील और सहानुभूतिपूर्ण दृष्टिकोण अपनाने हेतु निर्देशित करने की है, ताकि वे महिलाएँ, उनके बयान दर्ज

करते समय, उन भयावह और दर्दनाक अनुभवों का विवरण सुगमता से विवेचना में अभिलिखित करा सकें, जो उन्होंने सहे हैं।

4- इस संबंध में मुझे यह कहने का आदेश हुआ है कि कृपया सभी विवेचना अधिकारियों को संशोधित धारा 161 दण्ड प्रक्रिया संहिता, 1973 में निहित उपर्युक्त वर्णित प्रावधानों से अवगत कराने के लिए सख्त निर्देश निर्गत करते हुए उक्त का कड़ाई से अनुपालन और क्रियान्वयन कराना सुनिश्चित करने का कष्ट करें।

भवदीय

ह० अपठनीय

(अवनीश कुमार अवस्थी)

अपर मुख्य सचिव।

Affidavits/suggestions/undertakings of the State Government

33. An affidavit of Shri Awanish Kumar Awasthi, Additional Chief Secretary (Home), Government of Uttar Pradesh Lucknow dated 29.8.2022 has also been filed, which is taken on record.

34. In paragraph No. 4 of the affidavit, it is mentioned that a meeting was convened on 26.8.2022 under the Chairmanship of Additional Chief Secretary (Home), Government of Uttar Pradesh, Lucknow, which was attended by Mr. B.D. Paulson, Secretary, Home Department, Government of U.P. Lucknow, Mr. Tarun Gauba, Secretary Home Department, Government of Uttar Pradesh, Lucknow, Mr. M.K. Bashal, Additional Director General of Police (Crime), U.P. Lucknow, Mr. Prem Prakash, Additional Director General of Police, Prayagraj Zone, Prayagraj (through video conferencing), Mr. Amit Pathak, Deputy Inspector General of Police (Public Grievance) DGP Headquarters, U.P. Lucknow, Mr. Rakesh Kumar Malpani, Special Secretary, Home Department, Dr. A.K. Singh, Special

Secretary, Home Department, Mr. Shiv Kumar Pal, Government Advocate, High Court, Allahabad (through video conferencing), Mr. M.C. Chaturvedi, Additional Advocate General, High Court, Allahabad (through video conferencing) and Mr. Ashish Singh, Senior Prosecuting Officer and after due deliberation, following decisions were taken:

(i) Postmortem and injury reports must be typed out and made easily legible and practice of handwritten reports be discontinued.

(ii) During the postmortem examination, there should be DNA and fingerprint sampling and necessary software must be developed for this purpose.

(iii) In cases of gunshot injuries, instead of full body x-ray, the x-ray should be of the area where the wound is located. However, in such cases where the wound of entry or exit is not apparent, the need of taking x-ray be made mandatory.

(iv) During postmortem examination, the injuries on the dead body should be photographed in colour to highlight the same.

(v) An index be prepared to be appended with each case diary, which is submitted before the Prosecutor/Hon'ble Judges. It should be explored if necessary facility can be provided through CCTNS

software.

(vi) A synopsis be prepared of the contents of the report containing the opinion of the investigating officer as encapsulated in the report under Section 173(2) Cr.P.c. An index should also be prepared for convenient perusal and reference. This synopsis be a part of the report under Section 173(2) Cr.P.C.

(vii) The importance of the role of the supervisory officer be emphasized and that the said officer should not function only as a post office. Every investigation must be scrutinized in a microscopic manner and any lacuna or lapse must be pointed out to the investigating officer. Provisions should also be made for training the investigating officer on a regular basis.

(viii) Senior Supervisory Officers must submit the report submitted by the police under Section 173(2) Cr.P.C expeditiously and not hold it back in their custody needlessly. In this context, a letter dated 05.05.2016 had already been issued by the Director General of Police, U.P. Lucknow.

(ix) Before ordering further investigation under Section 173(8), it is desirable to seek permission/give information to the concerned learned court, but the necessity of this step be examined in the light of the relevant and applicable statutory provisions and the judgements and

observations passed by Hon'ble Apex Court and Hon'ble High Court. In all cases where the statements of witnesses are recorded using audio/video mode, the relevant material be made part of the case diary by means of compact disc/pen drive.

(x) The font size used for preparing the case diary be increased to a size, which would facilitate easy and legible perusal of the same. For this purpose, the cooperation of NIC be sought to implement the increase in font-size in the records, uploaded on the CCTNS.

(xi) The strict adherence be ensured to the statutory provisions encapsulated in Section 65B IPC and that investigating officer be trained to adopt a sensitive approach in these matters.

(xii) It was emphasized that proper directions be imparted to supervisory officers to ensure that they perform their duty efficiently and diligently. It was informed by the Additional Director General of Police (crime) that in all districts (pan state) training was being imparted in orderly room and by crime meetings. The Additional Chief Secretary (Home), Government of U.P., Lucknow issued directions that action be initiated against those investigating officer who displayed negligence in discharging their duties and thereby impair fair and proper investigation.

(xiii) In every district, the Joint Director (Prosecution) should head a legal cell, which should be established with the aim to educate all investigating officers with the latest amendments in criminal law and the judgements passed by the Hon'ble Apex Court and Hon'ble High Court.

(xiv) Lastly, it was decided that the necessary government order/circular/road-map, which was to be issued covered a vast range and the support and cooperation of technical and other departments was required.

35. The Minutes of the meeting dated 26.8.2022, which was held under the chairmanship of Additional Chief Secretary (Home), Government of U.P., Lucknow is reproduced herein under for ready reference:

अपर मुख्य सचिव, गृह की अध्यक्षता में दिनांक **26-08-2022** को अपराह्न **4:00** बजे क्रिमिनल मिस बेल एप्लीकेशन संख्या- **56496/2021** विवेक सिंह बनाम उत्तर प्रदेश राज्य व अन्य में मा10 उच्च न्यायालय, इलाहाबाद के निर्देशों के क्रम में प्रति शपथ पत्र दाखिल किए जाने हेतु सम्पन्न बैठक का कार्यवृत्त ।

आयोजित बैठक में निम्नलिखित अधिकारियों द्वारा प्रतिभाग किया गया :--

- (1) श्री बी0 डी0 पॉल्सन, सचिव, गृह विभाग, उत्तर प्रदेश शासन
- (2) श्री तरुण गाबा, सचिव, गृह विभाग, उत्तर प्रदेश शासन
- (3) श्री एम 0 के0 बशाल, अपर पुलिस महानिदेशक, अपराध, उत्तर प्रदेश, लखनऊ।
- (4) श्री प्रेम प्रकाश, अपर पुलिस महानिदेशक, प्रयागराज जोन, प्रयागराज (ऑनलाइन जूम के माध्यम से)।

- (5) श्री अमित पाठक, पुलिस उपमहानिरीक्षक (लो0 शि0), मुख्यालय पुलिस महानिदेशक, उ0 प्र0, लखनऊ।
- (6) श्री राकेश कुमार मालपाणी, विशेष सचिव, गृह विभाग, उत्तर प्रदेश शासन।
- (7) डा0 ए0 के0 सिंह, विशेष सचिव, गृह विभाग, उत्तर प्रदेश शासन
- (8) श्री शिव कुमार पाल, शासकीय अधिवक्ता, मा0 उच्च न्यायालय, इलाहाबाद (ऑनलाइन जूम के माध्यम से)
- (9) श्री एम०सी० चतुर्वेदी, अपर महाधिवक्ता, मा0 उच्च न्यायालय, इलाहाबाद (ऑनलाइन जूम के माध्यम से)
- (10) श्री आशीष सिंह, ज्येष्ठ अभियोजन अधिकारी, गृह विभाग ।

बैठक का शुभारम्भ करते हुए क्रिमिनल मिस) बेल अप्लीकेशन संख्या-56496/2021 विवेक सिंह बनाम उत्तर प्रदेश राज्य व अन्य के सम्बन्ध में दिनांक 17.08.2022 को हुई सुनवाई में मा0 उच्च न्यायालय, इलाहाबाद द्वारा दिए गए निर्देशों के क्रम में प्रति शपथ पत्र दाखिल किए जाने हेतु अभियोगों की विवेचना, उनके समयबद्ध निस्तारण तथा पर्यवेक्षण के सम्बन्ध में गहन विचार-विमर्श हुआ। विचार-विमर्श के उपरान्त निम्नलिखित निर्णय लिया गया:

1. पोस्टमॉर्टम रिपोर्ट/ इंजरी रिपोर्ट/ पूरक चिकित्सा रिपोर्ट की एक टाइपशुदा प्रति होनी चाहिए जो कि सामान्यतःहस्तलिखित होती है। यह निर्देश दिए गए कि तत्सम्बन्धी दिशा निर्देश निर्गत करने हेतु अपर मुख्य सचिव, चिकित्सा एवं स्वास्थ्य से भी अनुरोध कर लिया जाए।

(कार्यवाही - अपर मुख्य सचिव चिकित्सा एवं स्वास्थ्य विभाग एवं ए डी जी तकनीकी सेवाएं)

2. पोस्टमॉर्टम के दौरान शवों के डीएनए फिंगरप्रिंट के लिए अनिवार्य सैंपलिंग होनी चाहिए। इस संबंध में अपर मुख्य सचिव गृह द्वारा सॉफ्टवेयर विकसित किये जाने के सम्बन्ध में पूर्ण जानकारी प्राप्त करने के निर्देश दिये गये।

(कार्यवाही- अपर मुख्य सचिव, चिकित्सा एवं स्वास्थ्य विभाग, उ०प्र० शासन, एडीजी अपराध, एडीजी तकनीकी सेवाएं एवं निदेशक, विधि विज्ञान प्रयोगशाला, उ० प्र०)

3. विचार-विमर्श के दौरान यह निर्णय लिया गया कि बंदूक से गोली लगने की स्थिति में मृतक के शरीर का पूरा एक्स-रे लेने के बजाय उस अंग का एक्स-रे कराया जाए, जहाँ पर गोली लगी है। यह भी विचार किया गया कि ऐसे प्रकरणों में एक्स-रे किया जाना आवश्यक कर दिया जाए, जिनमें शरीर में प्रविष्ट गोली की स्थिति ज्ञात न हो पा रही हो।

(कार्यवाही अपर मुख्य सचिव, चिकित्सा एवं स्वास्थ्य विभाग, एडी जी तकनीकी सेवाएं एवं निदेशक, विधि विज्ञान प्रयोगशाला, उ० प्र०)

4. पोस्टमॉर्टम के दौरान मृतक की चोटों को उजागर करने वाली रंगीन तस्वीरें ली जाए तथा इन दस्तावेजों को केस डायरी का हिस्सा बनाया जाए।

(कार्यवाही - प्रमुख सचिव चिकित्सा एवं स्वास्थ्य विभाग, ए डी जी तकनीकी सेवाएं एवं
निदेशक, विधि विज्ञान प्रयोगशाला, उ 0 प्र 0)

5. विचार-विमर्श के दौरान यह निर्णय लिया गया कि केस डायरी में अभियोजक /माननीय न्यायाधीशों और अधिवक्ताओं को प्रासंगिक विवरण / दस्तावेज आसानी से प्राप्त करने में सुविधा के दृष्टिगत केस डायरी में उचित अनुक्रमणिका (Index) अंकित किया जाए। इस सम्बन्ध में सीसीटीएनएस सॉफ्टवेयर पर ही उक्त सुविधा प्रदान किए जाने की संभावना का भी अध्ययन कर लिया जाए।

(कार्यवाही- ए डी जी अपराध एवं ए डी जी तकनीकी सेवाएं)

6. चार्जशीट में विवेचना का सारांश अर्थात् विवेचना के दौरान एकत्र की गई सामग्री/ साक्ष्यों का संक्षिप्त विवरण / सारांश अंकित किया जाए, जो धारा 173 (2) सीआरपीसी के तहत पुलिस रिपोर्ट जमा करने में जांच अधिकारी की राय बनाता है। केस डायरी के पत्रों के तात्विक तथ्यों का सारांश उक्त अनुक्रमणिका (Index) में अवश्य समाहित किया जाए।

(कार्यवाही- ए डी जी अपराध एवं ए डी जी तकनीकी सेवाएं)

7. विचार-विमर्श के दौरान यह निर्णय लिया गया कि अभियोगों की विवेचना में पर्यवेक्षणीय अधिकारी को उचित और प्रभावी तरीके से विवेचना का पर्यवेक्षण करना चाहिए और केवल डाकघर के रूप में कार्य नहीं करना चाहिए। जब भी उन्हें जांच में कुछ अनियमितता या कमी महसूस हो तो वह जांच अधिकारियों को निर्देश दें तथा उक्त के सम्बन्ध में विवेचकों को नियमित रूप से प्रशिक्षण भी प्रदान कराया जाए। इस सम्बन्ध में पूर्व में निर्गत शासनादेश / सर्कुलर को भी पुनः जारी किया जाय।

(कार्यवाही- ए डी जी अपराध)

8. वरिष्ठ पर्यवेक्षणीय अधिकारी को पुलिस रिपोर्ट को संबंधित न्यायालय में शीघ्रता से प्रस्तुत करने और उसे लंबे समय तक अभिरक्षा में न रखने का निर्देश दिया गया। इस संदर्भ में ए.डी.जी. अपराध द्वारा अवगत कराया गया कि डी. जी. 2016 का पत्र संख्या 24 दिनांक 05.05.2016 पहले ही जारी किया जा चुका है। बैठक में इसका कड़ाई से अनुपालन सुनिश्चित किए जाने का निर्देश दिया गया।

(कार्यवाही- ए डी जी अपराध एवं ए डी जी तकनीकी सेवाएं)

9. विचार-विमर्श के दौरान यह निर्णय लिया गया कि अग्रेतर विवेचनाओं (Further Investigation) से सम्बन्धित ऐसे मामले, जिनमें आरोप पत्र पहले ही दायर किया जा चुका है, में संबंधित न्यायालय से उचित सूचना / अनुमति अवश्य ले ली जाए, परन्तु इस सम्बन्ध में किसी सर्कुलर आदि के निर्गमन के पूर्व दण्ड प्रक्रिया संहिता, 1973 तथा मा10 सर्वोच्च न्यायालय एवं मा10 उच्च न्यायालय द्वारा निर्णीत विधि व्यवस्थाओं का भी अध्ययन कर लिया जाए।

(कार्यवाही ए डी जी अपराध)

10. उन मामलों में जहां गवाहों के भयान ऑडियो-वीडियो इलेक्ट्रॉनिक माध्यमों में दर्ज किए गए हैं, को केस डायरी का हिस्सा बनाया जाए और केस डायरी के साथ संबंधित सीडी / पेन ड्राइव के साथ मा० न्यायालय में प्रस्तुत किया जाए। उक्त इलेक्ट्रॉनिक साक्ष्यों की सुरक्षा व अभिरक्षा की श्रृंखला (Chain of Custody) भी सुनिश्चित की जाए।

(कार्यवाही- ए डी जी अपराध एवं ए डी जी तकनीकी सेवाएं)

11. केस डायरी का फॉण्ट साइज बढ़ाया जाना चाहिए ताकि वह अधिक सुपाठ्य हो सके, इस सम्बन्ध में अपर पुलिस महानिदेशक, अपराध द्वारा अवगत कराया गया कि वर्तमान में सीसीटीएनएस पर दर्ज होने वाली कार्यवाहियों के फॉण्ट साइज बढ़ाने हेतु एनआईसी आदि एजेन्सियों से अपेक्षित सहयोग लिया जाएगा।

(कार्यवाही- ए डी जी अपराध एवं ए डी जी तकनीकी सेवाएं)

12. इलेक्ट्रॉनिक साक्ष्य के मामले में भारतीय साक्ष्य अधिनियम की धारा 65-बी का पूर्ण अनुपालन सुनिश्चित किया जाए। इस सम्बन्ध में पुलिस मुख्यालय से एक परिपत्र निर्गत किया जाए तथा विवेचकों को प्रशिक्षण के माध्यम से संवेदनशील बनाया जाए।

(कार्यवाही- ए डी जी अपराध)

13. विवेचना के सघन एवं निकट पर्यवेक्षण हेतु समस्त पर्यवेक्षणीय अधिकारियों को निर्देशित कर दिया जाए। अपर पुलिस महानिदेशक, अपराध द्वारा यह अवगत कराया गया कि जनपदों में नियमित रूप से अर्दली रूम तथा क्राइम मीटिंग के माध्यम से विवेचनाओं का पर्यवेक्षण किया जाता है, जिस पर अपर मुख्य सचिव महोदय द्वारा ऐसे विवेचकों के विरुद्ध कार्यवाही करने के निर्देश दिए गए, जो जान-बूझकर विवेचना में उपेक्षा करते हैं।

(कार्यवाही पुलिस महानिदेशक, उ० प्र०)

14. प्रत्येक जिले में संयुक्त निदेशक, अभियोजन की अध्यक्षता में विधि प्रकोष्ठ की स्थापना की जाए तथा उक्त प्रकोष्ठ द्वारा नियमित रूप से विवेचकों को आपराधिक कानून में नवीनतम संशोधन के संबंध में और माननीय उच्चतम न्यायालय और माननीय उच्च न्यायालय के नवीनतम निर्णयों से अवगत करना जाए।

(कार्यवाही अपर पुलिस महानिदेशक अभियोजन)

15. बैठक में विचार-विमर्श के उपरान्त यह मत स्थिर हुआ कि प्रकरण में निर्गत किए जाने वाले शासनादेश/ सर्कुलर/मार्गदर्शिका का विषय क्षेत्र व्यापक है तथा इसमें अनेकों तकनीकी एवं अन्य विभागों के भी सहयोग की आवश्यकता है। इस पर तत्काल कार्यवाही करते हुये मा० उच्च न्यायालय को अवगत कराया जाय।

Conclusion

36. On the strength of the said decision, which was taken in the meeting dated 26.8.2022, it is submitted by Shri M.C. Chaturvedi, learned Additional Advocate General and Shri Shiv Pal Singh, learned Government Advocate that the aforesaid decision taken by the State Government shall be effectively implemented as expeditiously as possible not later than two months.

37. Shri Prem Prakash, Additional Director General of Police, Prayagraj Zone, Prayagraj on behalf of the Director General of Police, U.P. Lucknow assures the Court that apart from the aforesaid steps/suggestions, he will also take other steps to be needed for fair investigation.

38. This Court is of the view that criminal justice administration system in India places human rights and dignity of human at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty. The accused is entitled to fair and impartial investigation and fair trial and prosecution is expected to play a balanced role in the trial.

39. Fair and unbiased investigation are the fundamental canons of our criminal jurisprudence and are quite in conformity with the constitutional mandate enshrined in Articles 20 and 21 of the Constitution of India. Every investigation has to be conducted in a fair manner and in accordance with law. Fair and proper investigation is the primary duty of the investigating officer. In every civilized society, the police is invested with powers of investigation of a crime to secure

punishment for the criminals and it is in the interest of the society that the investigating agency must act honestly and fairly and did not resort to fabricating false evidence or creating false clues because such acts shake the confidence of the common people not only in the investigating agency, but in the ultimate analysis in the system of dispensation of criminal justice.

40. On the strength of affidavit dated 10.7.2022 filed by Shri Awanish Kumar Awasthi, as mentioned in preceding paragraphs, he assured the Court that amended provisions of Section 161 Cr.P.C. and Sub-Section 10 of Section 15A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act shall be complied with and implemented in letter and spirit.

41. Considering the steps taken by the State Government for strict implementation of the amended provisions of Section 161 Cr.P.C. and Sub Section 10 of Section 15A of the SC/ST Act and the undertakings given by the State Government by means of affidavit dated 10.07.2022 and 29.8.2022 both filed by Shri Awanish Awasthi, Additional Chief Secretary (Home), U.P., Lucknow for implementation of various reform and improvement in investigation system as mentioned in the preceding paragraphs as well as assurance given to the Court that whatever other necessary steps will be needed to improve the investigation system shall also be taken from time to time by the State Government, this Court does not find any reason to doubt on the aforesaid undertakings given by the State Government and feels that at this stage no further direction is required. I hope and trust that the State Government shall

make all efforts to ensure the compliance of undertakings given by the State Government in the affidavit dated 10.7.2022 and 29.8.2022 for improving the investigation system.

42. Before parting with the case, this Court records its appreciation to Shri Prem Prakash, Additional Director General of Police, Prayagraj Zone, Prayagraj, who attended the Court proceeding on behalf of the Director General of Police, U.P. Government and Shri Radhey Mohan Srivastava, Additional LR, who attended the Court proceeding on behalf of LR, U.P. Government for their valuable assistance and making sincere and tireless efforts to streamline the investigation system.

43. Registrar (Compliance) is directed to send a copy of this order immediately to the Additional Chief Secretary (Home), UP, Lucknow and the Director General of Police, UP, Lucknow.

44. The Additional Chief Secretary (Home), U.P. Lucknow is directed to send a copy of this order to the Director General (Health), who in turn shall circulate the same to all the CMOs of the district as well as to the authorities, who are concerned for execution of the decision taken in the meeting dated 26.8.2022 for compliance.

45. The Director General of Police is directed to circulate a copy of this order to all the Senior Superintendent of Police/Superintendent of Police of the districts for compliance.

Order Date :- 30.08.2022

Ishrat

46. Since, the aforesaid cases have been connected and heard together only for limited purpose and common order is

passed, they are disconnected and be listed separately on 07.9.20222 before the appropriate Bench for consideration of prayer for bail.

47. Put up this matter on 07.9.2022 before the appropriate Bench for hearing the matter on merits as fresh.

Order Date :- 30.08.2022

Ishrat