

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr) (Hb.) No. 369 of 2021

Sweta Priyadarshni	Petitioner
Versus			
The State of Jharkhand & Others	Respondents

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ANANDA SEN

For the Petitioner	: Mrs. Ritu Kumar, Advocate
	: Mr. Rajendra Krishna, Advocate
	: Mr. Navin Kumar, Advocate
	: Mr. Dheeraj Kumar, Advocate
For the State of Jharkhand	: Mr. Ashutosh Anand, A.A.G.-III
	: Mr. Piyush Chitresh, A.C. to A.G.
For the State of Bihar	: Mr. Diwakar Upadhyay, Advocate

Order No. 02 : Dated 9th November, 2021

With the consent of the parties, hearing of the matter has been done through video conferencing and there is no complaint whatsoever regarding audio and visual quality.

This application is under Article 226 of the Constitution of India whereby and whereunder following reliefs have been sought for which read hereunder as :-

- (a) For issuance of appropriate writ(s)/order(s)/, direction (s) for issuance of writ of Habeas Corpus upon the respondents particularly the respondent no.2 & 3 to produce the husband of the petitioner namely Rajneesh Vardhan, Son of Bipin Kumar Sinha, Resident of Indrapuri, Road No. – 13, Ratu Road, P.O. & P.S. – Sukhdeo Nagar, District – Ranchi, State – Jharkhand before this Hon'ble Court in order to let the Hon'ble Court know on what ground he has been confined and taken to Stat of Bihar on 07.11.2021 in the late night from his residence at Ranchi without following due procedure of law by the

respondent Bihar Police with the help of Sukhdeo Nagar Police Station in total disregard to the ratio/guidelines laid by Hon'ble Supreme Court of India in the matter of inter-state arrest in D.K.Basu Vs Union of India (1997) 1 SCC pg 416 & in the case of Sandeep Kumar Vs. The State (Government of NCT of Delhi) & Ors.

- (b) For showing cause the respondents particularly the respondent no.2, 3, 5, 6 & more particularly respondent no.4 as to why and under what circumstances they have illegally took custody of the husband of the petitioner in the late night on 07.11.2021 without following the due procedure of law and various guidelines framed by Hon'ble Supreme Court of India in the matter of inter-state arrest and suitably take action against them for flouting the constitutional & statutory mandates.

At the outset, learned counsel appearing for the petitioner has sought for leave of this Court to implead the Principal Secretary, Home Department, Government of Bihar, as party respondent.

Such leave is granted.

The necessary correction be made in the arrays of the respondents by 20th November, 2021.

At the outset the learned counsel appearing for the petitioner namely Mrs. Ritu Kumar, submits that after filing of the writ petition and when the copy of the same has been served upon the learned counsel appearing for the State of Bihar as

also the State of Jharkhand, the husband of the writ petitioner has been forthwith released from the police custody.

Submission has also been made that even after the release of the concerned person, certain issues are of paramount consideration for this Court which pertains to the process having not been followed before arresting the husband of the writ petitioner.

It has been submitted that the Danapur Police has contacted with the Officer-in-charge of Sukhdeo Nagar Police Station for the arrest of husband of the writ petitioner for his alleged involvement in connection with Danapur P.S. Case No. 72/2021 registered under Sections 341, 406, 420, 506 and 120B of the Indian Penal Code.

It has further been submitted that both the Danapur Police and the Sukhdeo Nagar Police came to the residence of the husband of the petitioner, arrested him and has taken away to Danapur in the Patna district.

Upon such submission, we have called upon learned counsel who is representing the State of Jharkhand upon which Mr. Ashutosh Anand, learned Additional Advocate General-III has appeared and apprised us with certain documents which have been supplied by the Danapur Police Station through electronic mode (Whatsapp). The documents have been perused by us i.e. dated 25.10.2021, 02.11.2021, 03.11.2021, 06.11.2021 and 07.11.2021 as also the order passed by the concerned court rejecting the anticipatory bail of the husband of

the writ petitioner in connection with Danapur P.S. Case No. 72/2021.

Mr. Diwakar Upadhyay, learned counsel appearing for the respondent State of Bihar, has submitted that the husband of the writ petitioner was arrested since he was named in F.I.R. being Danapur P.S. Case No. 72/2021 and the anticipatory bail application filed on his behalf has been rejected vide order dated 07.04.2021 passed by Additional Sessions Judge-III, Danapur, Patna.

In response to the aforesaid submission, the learned counsel appearing for the writ petitioner has submitted that even accepting that the husband of the writ petitioner has been named in the F.I.R. and his anticipatory bail application has been rejected but the question remains to be considered by this Court is as to whether the process as stipulated in the Code of Criminal Procedure and the judgment passed by the Hon'ble Apex Court in ***D.K.Basu v. State of W.B.*** reported in ***(1997) 1 SCC 416***, ***Aman Preet Singh v. C.B.I. Through Director*** reported in ***2021 SCC Online SC 941***, ***Arnab Manoranjan Goswami v. State of Maharashtra and Others*** reported in ***(2021) 2 SCC 427*** and ***Arnesh Kumar v. State of Bihar and Another*** reported in ***(2014) 8 SCC 273*** was required to be followed or not?

Upon such submission, we have asked the learned counsel appearing for the respondent State of Bihar to ask a responsible police officer to appear and participate in the Court proceeding

through online mode for assistance on the issue. In pursuance thereto, Md. Imran Masood, at present working as Additional Superintendent of Police, Danapur appeared through online mode and he accepted by going through the contents of letter dated 07.11.2021 that the husband of the writ petitioner was arrested but immediately after realizing that since the punishment stipulated against the alleged offence committed by the husband of the writ petitioner, was less than 07 years, he has been released by serving him a notice under Section 41(A) of the Cr.P.C.

The State of Jharkhand has been represented by Mr. Ashutosh Anand, Additional Advocate General-III, who has submitted that the Sukhdeo Nagar Police Station which falls under the jurisdiction of Senior Superintendent of Police, Ranchi, has only cooperated the Danapur Police on the basis of the request made by them vide request letter dated 06.11.2021.

This Court put specific query to him as to whether the Sukhdeo Nagar Police Station has taken steps for issuance of transit remand from the concerned competent court of criminal jurisdiction before allowing the husband of the writ petitioner to accompany with the Danapur Police officials or not, to which he has submitted that he is having no instruction.

This Court then directed him to call upon the Senior Superintendent of Police, Ranchi to participate in the proceeding through online mode for assisting this Court.

The Senior Superintendent of Police, Ranchi has participated in the proceeding through online mode and has submitted that the husband of the writ petitioner has not been produced before any local Magistrate for transit remand.

This Court, after having heard the learned counsel for the parties as also the Additional Superintendent of Police, Danapur and the Senior Superintendent of Police, Ranchi has *prima facie* found that the procedure as stipulated in the Code of Criminal Procedure which is mandated to be followed before arresting a person, has not been followed.

There is no dispute about the fact that Article 21 of the Constitution of India envisages about personal liberty, which can only be taken away by following due procedure while Article 22(2) of Constitution of India provides the process to be followed after arrest. The due procedure, before arrest and post arrest, has been dealt with in detail by Hon'ble Apex Court in the judgment rendered in ***D.K.Basu v. State of W.B.*** (Supra), ***Aman Preet Singh v. C.B.I. Through Director*** (Supra), ***Arnab Manoranjan Goswami v. State of Maharashtra and Others*** (Supra) ***and Arnesh Kumar v. State of Bihar and Another*** (Supra).

This Court, therefore, is of the view that although the husband of the writ petitioner has been released after serving notice under Section 41(A) of the Cr.P.C. but the fact which is of concern is that whether arresting the husband of the writ petitioner in such a way as has been admitted by the Additional

Superintendent of Police, Danapur and Senior Superintendent of Police, Ranchi can be said to be in accordance with law?

Further, whether Section 41(A) of Cr.P.C. does provide to serve notice after arresting the accused?

This Court, therefore, directs the Senior Superintendent of Police, Ranchi and the Additional Superintendent of Police, Danapur/Senior Superintendent of Police, Patna to answer the following queries :-

- (i) Whether serving of notice under Section 41(A) of the Cr.P.C. upon the husband of the writ petitioner after his arrest can be said to be the correct mandate as stipulated under Section 41(A) of the Cr.P.C.?
- (ii) Whether notice under Section 41(A) of the Cr.P.C. can be given after arrest of the person concerned?
- (iii) Whether the law laid down by the Hon'ble Apex Court in ***D.K.Basu v. State of W.B.*** (Supra), ***Aman Preet Singh v. C.B.I. Through Director*** (Supra), ***Arnab Manoranjan Goswami v. State of Maharashtra and Others*** (Supra) and ***Arnesh Kumar v. State of Bihar and Another*** (Supra) has been followed depriving from the personal liberty of the husband of the writ petitioner as mandated under Article 21 of the Constitution of India?
- (iv) Whether the husband of the writ petitioner was produced by Sukhdeo Nagar Police Station (Ranchi) before any local Magistrate having its jurisdiction at

Ranchi for transit remand for allowing him to accompany with the Danapur Police officials?

(v) Whether the husband of the writ petitioner was produced before the local Magistrate having the jurisdiction over the Danapur Police Station in the district of Patna after his arrest as mandated under Article 22(2) of the Constitution of India?

(vi) What were the documents executed by the police at the time of releasing the husband of the petitioner?

Let the affidavits be filed replying the above queries to be duly been sworn by the Additional Superintendent of Police, Danapur/Senior Superintendent of Police, Patna and the Senior Superintendent of Police, Ranchi on or before the next date of hearing.

With the consent of the learned counsel for the parties, let this matter be posted on 25th November, 2021.

In the meanwhile, the defects, as has been pointed out by the office, shall be removed.

The documents dated 07.04.2021, 25.10.2021, 02.11.2021, 03.11.2021, 06.11.2021 and 07.11.2021 received through Whatsapp be kept on record.

(Sujit Narayan Prasad, J.)

(Ananda Sen, J.)