

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Writ Petition No.26319/2019
Gautam Das & Others v/s The State of Madhya Pradesh & Others

Indore, dated 06.12.2019

Dr. Shri Manohar Dalal, Advocate for the petitioners.

Shri Ravindra Singh Chhabra, Additional Advocate General for the respondents / State.

The petitioners before this Court have filed this present petition under Article 226 of the Constitution of India stating that they are residents of 'My Home Hotel' and being musician, they have been engaged to perform before the guests.

02. It has been stated that on 01.12.2019 at 4:30 am, the police personnel entered into the hotel and has taken 67 ladies in their custody, and thereafter, they have been kept in shelter home known as 'Odhni Hall'. The basic contention of the petitioners is that their wives are under illegal detention, and therefore, a writ in the nature of *habeas corpus* be issued.

03. There are other allegations also in the present writ petition alleging that proper food and other facilities are not being provided to the ladies, who have been kept in shelter home and as petitioners are husbands of the ladies, as detailed in the writ petition, the wives be permitted to go with them. The petitioners, though they are projecting themselves as musician, have filed an affidavit in support of the writ petition and they have disclosed their occupation as "Majdoori" (labourer).

04. The matter was listed on 04.12.2019 and the Senior Superintendent of Police Ms. Ruchi Vardhan Mishra, I.P.S., who was present in Court, was granted time to file an affidavit keeping in view the allegations made against the Police Department and the matter was adjourned for 06.12.2019.

05. A detailed and exhaustive affidavit has been filed by the Senior Superintendent of Police, Indore and the same reads as under:-

“AFFIDAVIT”

I, the deponent, solemnly state on oath as under :-

1. That,

My Name : Ruchi Vardhan Mishra
 Father's Name : Shri Harshvardhan Shrivastava
 Age : 39 years
 Occupation : Senior Superintendent of Police
 Address : SSP Office, Regal Square, Indore

2. I state that the present Affidavit is being filed in compliance of order dated 04.12.2019 passed by this Hon'ble Court.

3. I state that on 30.11.2019, 67 women and 7 children were rescued from a bar and restaurant named as “MY HOME” owned / operated / managed by one Jitendra @ Jeetu Soni and Amit Soni. “MY HOME” is merely having FL-3 Licence for Bar and does not have permission to accommodate residents / inmates/ visitors on payment or without payment.

4. I state that an offence u/s 370(3), 346 and 120B IPC has been registered against Jitendra Soni and Amit Soni in Crime No.496/2019 at PS Palasia on 01.12.2019. I state that around 223 criminal cases are registered against Mr. Jitendra Soni. List of cases

registered against Mr. Jitendra Soni are annexed hereto and marked as Annexure-A.

5. I state that "MY HOME" is not registered as a "Hotel". The victims who have been rescued have stated that a Brothel is being functional in the guise of Bar and Restarunet and they were forced to dance in bars, allure customers for money which went in the coffers of Mr. Jitendra Soni and human trafficking for the purpose of prostitution was also carried out. The women were brought from Bengal, Assam and adjoining places through Agents who claim to be their husbands / relatives. The provisions of the M.P. Excise Act, 1915 prohibits engagement of women at the Bar. Copy of the Photograph depicting the pathetic condition in which the rescued women were living at "MY HOME" are annexed hereto and marked as Annexure-B.

6. I state that the 67 women and 7 children aged around 1-8 years were detained illegally at "MY HOME". The Police Officials along with the team of Women & Child Development Department rescued the women and children from the illegal detention at "MY HOME" and have accommodated them at Jeevan Jyoti Ashram as a temporary shelter which is being supervised by Women & Child Development Department.

7. I state that the rescued children were kept in a pitiable and unhygienic environment amongst the visitors of the Bar and Restaurant "MY HOME" and were not allowed to go out in open air thereby depriving them of their natural growth and education. The Health Inspector has also submitted a report w.r.t. The bad, unhygienic and pathetic condition. Copy of report of the

health Inspector is annexed hereto and marked as Annexure-C.

8. I state that the rescued women and children are being given proper accommodation, food, counselling, medical care and protection at Jeevan Jyot Ashram. Copy fo the Photograph of rescued women and children living at Jeevan Jyoti Hospital are Annexed hereto and marked as Annexure-D.

9. I state that these rescued women are prime witnesses in the case and are most vulnerable considering the fact that the prime accused is still absconding having criminal antecedents.

10. I state that the rescued women were not on any employment roll of “MY HOME” or under any contract. The rescued women do not have any Salary or Provident Fund account and no labour law is being followed at “MY HOME”.

11. I state that the victims belong to distant places of Bengal, Assam and adjoining places and have remained under strict control of accused who has dreaded criminal record and have pushed these victims into prostitution, bonded labour and trafficking and are threatened for their life and security, hence the victims have filed an application under “Witness Protection Scheme, 2018” as frmaed by the Hon'ble Supreme Court of India exercising its power under Article 141 / 142 of the Constitution of India in the case of Mahender Chawla v/s Union of India reported in 2018 SCC OnLine SC 2679. The Application are being processed by the Standing Committee comprising of District, Indore, SSP, Indore and District Prosecution Officer, Indore.

12. I state that the petitioners have shown “MY

HOME" as their address in the petitioner which itself falsifies and negates the averments made in the Petition as "MY HOME" is neither a Hotel nor any dwelling place / lodge and ha e also show themselves as labourers residing in VIP rooms of "MY HOME".

PLACE : INDORE

DATED : DEPONENT

VERIFICATION

I, the abovenamed deponent, solemnly affirm and declare on oath that what is stated above in paragraph No.1 to end of this affidavit are true from my personal knowledge and nothing is concealed and nothing untrue is stated therein. Sworn by me today on day of December, 2019.

PLACE : INDORE

DATED : DEPONENT"

06. The affidavit filed in the matter reveals that a brothel was functional under the guise of a bar and restaurant, the ladies were forced to dance in the bar and they were forced to allure the customer for money. The ladies were brought from Bengal, Assam and adjoining places including Bangladesh through Agents, who are claiming themselves to be husbands / relatives. The affidavit makes it very clear that the so called bar and restaurant 'My Home' was owned, operated and managed by one Jitendra alias Jeetu Soni and Amit Soni and there is licence in existence i.e. FL-3 granted under the Excise Act.

07. A case has been registered against Jitendra Soni and Amit Soni at Crime No.496/2019 at Police Station – Palasia on 01.12.2019 for the offences punishable under Sections 370(3), 346 and 120B of the Indian Penal Code. The police

authorities have rescued 67 women and 7 children aged about one to eight years, who were illegally detained at 'My Home Hotel'. In order to ensure the safety of 67 women and 7 children, they have been accommodated at Jeevan Jyoti Aashram as temporary shelter, which is being supervised by Women & Child Development Department of the State of Madhya Pradesh.

08. The affidavit also reveal that the women rescued are being provided proper accommodation, food, counselling, medical care as well as protection and they are living happily at Jeevan Jyoti Aashram.

09. The case-diary was also produced in the matter in respect of the crime in question and the ladies, who have been rescued, have given statement under Section 164 of the Code of Criminal Procedure, 1973 in respect of Crime No.496/2019, about the inhuman conditions under which they were kept in the so called hotel 'My Home'.

10. The statement of the ladies, who are now witnesses in respect of Crime No.496/2019, reveal that all kind of nefarious activities and flesh trade used to take place in the hotel. Girls were forced to sleep with the customers, they were not given proper food and they were not permitted to go outside the hotel.

11. The statement before the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 also reveals that the main culprit used to beat them by hockey stick, a girl has also committed suicide after she was beaten up and they were being tortured day – night in the hotel (brothel).

12. This Court, after careful consideration of the entire

evidence on record, is of the considered opinion that it is not a case for issuance of a writ of *habeas corpus*. The rescued women are prime witnesses in respect of Crime No.496/2019 and they are having a threat of life. The safety of women is of paramount importance to this Court, especially when, they are women of very young age and who have been subjected to torture and all kind of sexual crimes.

13. The Hon'ble Supreme Court in the case of ***Mahender Chawla v/s Union of India reported in 2018 SCC OnLine SC 2679*** in paragraphs – 1 to 5 has held as under :-

“1. The instant writ petition filed by the petitioners under Article 32 of the Constitution of India raises important issues touching upon the efficacy of the criminal justice system in this country. In an adversarial system, which is prevalent by India, the court is supposed to decide the cases on the basis of evidence produced before it. This evidence can be in the form of documents. It can be oral evidence as well, i.e., the deposition of witnesses. The witnesses, thus, play a vital role in facilitating the court to arrive at correct findings on disputed questions of facts and to find out where the truth lies. They are, therefore, backbone in decision making process. Whenever, in a dispute, the two sides come out with conflicting version, the witnesses become important tool to arrive at right conclusions, thereby advancing justice in a matter. This principle applies with more vigor and strength in criminal cases inasmuch as most of such cases are decided on the basis of testimonies of the witnesses, particularly, eye-witnesses, who may have seen actual occurrence/crime. It is for this reason that Bentham stated more than 150 years ago that "witnesses are eyes and ears of justice".

2. Thus, witnesses are important players in the judicial system, who help the judges in arriving at correct factual findings. The instrument of evidence is the medium through which facts, either disputed or required to be proved, are effectively conveyed to the courts. This evidence in the form of documentary and

oral is given by the witnesses. A witness may be a partisan or interested witness, i.e., a witness who is in a near relation with the victim of crime or is concerned with conviction of the accused person. Even his testimony is relevant, though, stricter scrutiny is required while adjudging the credence of such a victim. However, apart from these witnesses or the witnesses who may themselves be the victims, other witnesses may not have any personal interest in the outcome of a case. They still help the judicial system. In the words of *Whittaker Chambers*, a witness is "a man whose life and faith are so completely one that when the challenge comes to step out and testify for his faith, he does so, disregarding all risks, accepting all consequences¹."

3. The importance of the witness, particularly in a criminal trial is highlighted in a book in the following manner:

"In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion.

xxx xxx xxx

The value of witnesses can't be denied, keeping in view the dependency of the criminal proceedings on the testimonies and cooperation of witnesses in all the stages of the proceedings, especially in those cases where the prosecution has to establish the guilt with absolute certainty via oral cross-examination of witnesses in hearings open to the world at large. In such cases, the testimony of a witness, even if not as an eye witness, may prove to be crucial in determining the circumstances in which the crime might have been committed..."

4. Notwithstanding the same, the conditions of witnesses in Indian Legal System can be termed as 'pathetic'. There are many threats faced by the witnesses at various stages of an investigation and then during the trial of a case. Apart from facing life threatening intimidation to himself and to his relatives, he may have to face the trauma of attending the court regularly. Because of the lack of Witness Protection Programme in India and the treatment that is meted out to them, there is a tendency of reluctance in coming forward and making statement during the investigation and/or testify in courts. These witnesses neither have any legal remedy nor do they get suitably treated. The present legal system takes witnesses completely for granted. They are summoned to court regardless of their financial and personal conditions. Many times they are

made to appear long after the incident of the alleged crime, which significantly hampers their ability to recall necessary details at the time of actual crime. They are not even suitably remunerated for the loss of time and the expenditure towards conveyance etc.

5. In *Swaran Singh vs. State of Punjab*³, this Court speaking through Wadhwa, J. expressed view on conditions of witnesses by stating that:

"The witnesses are harassed a lot. They come from distant places and see the case is adjourned. They have to attend the court many times on their own. It has become routine that case is adjourned till the witness is tired and will stop coming to court. In this process lawyers also play an important role. Sometimes witness is threatened, maimed, or even bribed. There is no protection to the witnesses. By adjourning the case the court also becomes a party to such miscarriage of justice. The witness is not given respect by the court. They are pulled out of the court room by the peon. After waiting for the whole day he sees the matter being adjourned. There is no proper place for him to sit and drink a glass of water. When he appears, he is subjected to prolong stretched examinations and cross examinations. For these reasons persons avoid becoming a witness and because of this administration of justice are hampered. The witnesses are not paid money within time. The High Courts must be vigilant in these matters and should avoid harassment in these matters by subordinate staff. The witnesses should be paid immediately irrespective of the fact whether he examines or the matter is adjourned. The time has come now that all courts should be linked with each other through computer. The Bar Council of India has to play important role in this process to put the criminal justice system on track. Though the trial judge is aware that witness is telling lie still he is not ready to file complaint against such witness because he is required to sign the same. There is need to amend section 340(3)(b) of Cr.P.C."

14. In the aforesaid case, the Hon'ble Supreme Court approved the "Witness Protection Scheme, 2018". The aim and object of the Scheme is to ensure that investigation, prosecution and trial of criminal case is not prejudiced because the witnesses are intimidated or frightened to give

evidence without protection from violent or other criminal recrimination. It aims to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and overall administration of Justice. Witnesses need to be given the confidence to come forward to assist law enforcement and Judicial Authorities with full assurance of safety. It is aimed to identify series of measures that may be adopted to safeguard witnesses and their family members from intimidation and threats against their lives, reputation and property.

15. The Scheme approved by the Hon'ble Supreme Court of India in the aforesaid judgment reads as under :-

“1. SHORT TITLE AND COMMENCEMENT:

(a) The Scheme shall be called "Witness Protection Scheme, 2018" (b) It shall come into force from the date of Notification.

Part I

2. DEFINITIONS:

(a) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(b) "Concealment of Identity of Witness" means and includes any condition prohibiting publication or revealing, in any manner, directly or indirectly, of the name, address and other particulars which may lead to the identification of the witness during investigation, trial and post-trial stage;

(c) "Competent Authority" means a Standing Committee in each District chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of the Prosecution in the District as its Member Secretary.

(d) "Family Member" includes parents/guardian, spouse, live-in partner, siblings, children, grandchildren of the witness;

(e) "Form" means "Witness Protection Application Form" appended to this Scheme;

(f) "In Camera Proceedings" means proceedings

wherein the Competent Authority/Court allows only those persons who are necessary to be present while hearing and deciding the witness protection application or deposing in the court;

(g) "Live Link" means and include a live video link or other such arrangement whereby a witness, while not being physically present in the courtroom for deposing in the matter or interacting with the Competent Authority;

(h) "Witness Protection Measures" means measures spelt out in Clause 7, Part-III, Part-IV and Part V of the Scheme.

(i) "Offence" means those offences which are punishable with death or life imprisonment or an imprisonment up to seven years and above and also offences punishable under Section 354, 354A, 354B, 354C, 354D and 509 of IPC.

(j) "Threat Analysis Report" means a detailed report prepared and submitted by the Head of the Police in the District Investigating the case with regard to the seriousness and credibility of the threat perception to the witness or his family members. It shall contain specific details about the nature of threats by the witness or his family to their life, reputation or property apart from analyzing the extent, the or persons making the threat, have the intent, motive and resources to implement the threats. It shall also categorize the threat perception apart from suggesting the specific witness protection measures which deserves to be taken in the matter;

(k) "Witness" means any person, who posses information or document about any offence;

(l) "Witness Protection Application" means an application moved by the witness in the prescribed form before a Competent Authority for seeking Witness Protection Order. It can be moved by the witness, his family member, his duly engaged counsel or IO/SHO/SDPO/Prison SP concerned and the same shall preferably be got forwarded through the Prosecutor concerned;

(m) "Witness Protection Fund" means the fund created for bearing the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority under this scheme;

(n) "Witness Protection Order" means an order passed by the Competent Authority detailing the witness protection measures to be taken

(o) "Witness Protection Cell" means a dedicated Cell of State/UT Police or Central Police Agencies assigned the duty to implement the witness protection order.

Part II

3. CATEGORIES OF WITNESS AS PER THREAT PERCEPTION:

Category 'A': Where the threat extends to life of witness or his family members, during investigation/trial or thereafter.

Category 'B': Where the threat extends to safety, reputation or property of the witness or his family members, during the investigation/trial or thereafter.

Category 'C': Where the threat is moderate and extends to harassment or intimidation of the witness or his family member's, reputation or property, during the investigation/trial or thereafter.

4. STATE WITNESS PROTECTION FUND:

(a) There shall be a Fund, namely, the Witness Protection Fund from which the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority and other related expenditure, shall be met.

(b) The Witness Protection Fund shall comprise the following:-

i. Budgetary allocation made in the Annual Budget by the State Government;

ii. Receipt of amount of costs imposed/ordered to be deposited by the courts/tribunals in the Witness Protection Fund;

iii. Donations/contributions from Charitable Institutions/ Organizations and individuals permitted by Central/State Governments.

iv. Funds contributed under Corporate Social Responsibility.

(c) The said Fund shall be operated by the Department/Ministry of Home under State/UT Government.

5. FILING OF APPLICATION BEFORE COMPETENT AUTHORITY:

The application for seeking protection order under this scheme can be filed in the prescribed form before the Competent Authority of the concerned District where the offence is committed, through its Member Secretary along with supporting documents, if any.

6. PROCEDURE FOR PROCESSING THE APPLICATION:

- (a) As and when an application is received by the Member Secretary of the Competent Authority, in the prescribed form, it shall forthwith pass an order for calling for the Threat Analysis Report from the ACP/DSP in charge of the concerned Police Sub-Division.
- (b) Depending upon the urgency in the matter owing to imminent threat, the Competent Authority can pass orders for interim protection of the witness or his family members during the pendency of the application.
- (c) The Threat Analysis Report shall be prepared expeditiously while maintaining full confidentiality and it shall reach the Competent Authority within five working days of receipt of the order.
- (d) The Threat Analysis Report shall categorize the threat perception and also include suggestive protection measures for providing adequate protection to the witness or his family.
- (e) While processing the application for witness protection, the Competent Authority shall also interact preferably in person and if not possible through electronic means with the witness and/or his family members/employers or any other person deemed fit so as to ascertain the witness protection needs of the witness.
- (f) All the hearings on Witness Protection Application shall be held in-camera by the Competent Authority while maintaining full confidentiality.
- (g) An application shall be disposed of within five working days of receipt of Threat Analysis Report from the Police authorities.
- (h) The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State/UT or the Trial Court, as the case may be. Overall responsibility of implementation of all witness protection orders passed by the Competent Authority shall lie on the Head of the Police in the State/UT. However the Witness Protection Order passed by the Competent Authority for change of identity and/or relocation shall be implemented by the Department of Home of the concerned State/UT.
- (i) Upon passing of a Witness Protection Order, the Witness Protection Cell shall file a monthly follow-up report before the Competent Authority.

(j) In case, the Competent Authority finds that there is a need to revise the Witness Protection Order or an application is moved in this regard, and upon completion of trial, a fresh Threat Analysis Report shall be called from the ACP/DSP in charge of the concerned Police Sub- Division.

7. TYPES OF PROTECTION MEASURES:

The witness protection measures ordered shall be proportionate to the threat and shall be for a specific duration not exceeding three months at a time.

They may include:

- (a) Ensuring that witness and accused do not come face to face during investigation or trial;
- (b) Monitoring of mail and telephone calls;
- (c) Arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number;
- (d) Installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing etc;
- (e) Concealment of identity of the witness by referring to him/her with the changed name or alphabet;
- (f) Emergency contact persons for the witness;
- (g) Close protection, regular patrolling around the witness's house;
- (h) Temporary change of residence to a relative's house or a nearby town;
- (i) Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing;
- (j) Holding of in-camera trials;
- (k) Allowing a support person to remain present during recording of statement and deposition;
- (l) Usage of specially designed vulnerable witness court rooms which have special arrangements like live video links, one way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the image of face of the witness and to modify the audio feed of the witness' voice, so that he/she is not identifiable;
- (m) Ensuring expeditious recording of deposition during trial on day to day basis without adjournments;
- (n) Awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund

for the purpose of re-location, sustenance or starting a new vocation/profession, if desired;

(o) Any other form of protection measures considered necessary.

8. MONITORING AND REVIEW:

Once the protection order is passed, the Competent Authority would monitor its implementation and can review the same in terms of follow-up reports received in the matter. However, the Competent Authority shall review the Witness Protection Order on a quarterly basis based on the monthly follow-up report submitted by the Witness Protection Cell.

Part III

9. PROTECTION OF IDENTITY :-

During the course of investigation or trial of any offence, an application for seeking identity protection can be filed in the prescribed form before the Competent Authority through its Member Secretary. Upon receipt of the application, the Member Secretary of the Competent Authority shall call for the Threat Analysis Report. The Competent Authority shall examine the witness or his family members or any other person it deem fit to ascertain whether there is necessity to pass an identity protection order.

During the course of hearing of the application, the identity of the witness shall not be revealed to any other person, which is likely to lead to the witness identification. The Competent Authority can thereafter, dispose of the application as per material available on record. Once, an order for protection of identity of witness is passed by the Competent Authority, it shall be the responsibility of Witness Protection Cell to ensure that identity of such witness/his or her family members including name/parentage/occupation/address/digital footprints are fully protected. As long as identity of any witness is protected under an order of the Competent Authority, the Witness Protection Cell shall provide details of persons who can be contacted by the witness in case of emergency.

Part IV

10. CHANGE OF IDENTITY:-

In appropriate cases, where there is a request from the witness for change of identity and based on the Threat Analysis Report, a decision can be taken for conferring a new identity to the witness by the Competent

Authority. Conferring new identities includes new name/profession/parentage and providing supporting documents acceptable by the Government Agencies. new identities should not deprive the witness from existing educational/ professional/property rights.

Part V

11. RELOCATION OF WITNESS:

In appropriate cases, where there is a request from the witness for relocation and based on the Threat Analysis Report, a decision can be taken for relocation of the witness by the Competent Authority. The Competent Authority may pass an order for witness relocation to a safer place within the State/UT or territory of the Indian Union keeping in view the safety, welfare and wellbeing of the witness. The expenses shall be borne by the Witness Protection Fund.

Part VI

12. WITNESSES TO BE APPRISED OF THE SCHEME:

Every state shall give wide publicity to this Scheme. The IO and the Court shall inform witnesses about the existence of "Witness Protection Scheme" and its salient features.

13. CONFIDENTIALITY AND PRESERVATION OF RECORDS:

All stakeholders including the Police, the Prosecution Department, Court Staff, Lawyers from both sides shall maintain full confidentiality and shall ensure that under no circumstance, any record, document or information in relation to the proceedings under this scheme shall be shared with any person in any manner except with the Trial Court/Appellate Court and that too, on a written order. All the records pertaining to proceedings under this scheme shall be preserved till such time the related trial or appeal thereof is pending before a Court of Law. After one year of disposal of the last Court proceedings, the hard copy of the records can be weeded out by the Competent Authority after preserving the scanned soft copies of the same.

14. RECOVERY OF EXPENSES:

In case the witness has lodged a false complaint, the Home Department of the concerned Government can initiate proceedings for recovery of the expenditure incurred from the Witness Protection Fund.

15. REVIEW:

In case the witness or the police authorities are aggrieved by the decisions of the Competent Authority, a review application may be filed within 15 days of passing of the orders by the Competent Authority.”

16. Paragraph – 36 of the judgment delivered in the case of *Mahender Chawla (supra)* reads as under :-

“35. We, accordingly, direct that :

- (i) This Court has given its imprimatur to the Scheme prepared by respondent No.1 which is approved hereby. It comes into effect forthwith.
- (ii) The Union of India as well as States and Union Territories shall enforce the Witness Protection Scheme, 2018 in letter and spirit.
- (iii) It shall be the 'law' under Article 141/142 of the Constitution, till the enactment of suitable Parliamentary and/or State Legislations on the subject.
- (iv) In line with the aforesaid provisions contained in the Scheme, in all the district courts in India, vulnerable witness deposition complexes shall be set up by the States and Union Territories. This should be achieved within a period of one year, i.e., by the end of the year 2019. The Central Government should also support this endeavour of the States/Union Territories by helping them financially and otherwise.”

17. In light of the aforesaid judgment, the matter was immediately forwarded by the respondents to the District and Sessions Judge, Indore and a committee has been constituted comprising of (a) District Judge, Indore, (b) Senior Superintendent of Police, Ms. Ruchi Vardhan Mishra, I.P.S. (c) Superintendent of Police Headquarter Shri Suraj Verma and (d) District Prosecution Officer.

18. The matter was forwarded to the learned District Judge on 04.12.2019 and the learned District Judge, with quite promptitude, has constituted a committee and the report submitted by the learned District Judge dated

04.12.2019 reads as under:-

“04.12.2019

आज दिनांक को मोहम्मद युसुफ कुरैशी पुलिस अधीक्षक जिला इन्दौर, पूर्व, की ओर से एक पत्र थाना पलासिया के अपराध क्रमांक [496 / 2019](#) अपराध धारा 370 (3) 346, 120 वी भारतीय दंड संबंधित के तहत दिनांक 01.12.2019 को इन्दौर स्थित मायहोम होटल एवं बार के निरीक्षक के दौरान 67, महिलाओं एवं युवतियों को रेसेक्यू किया गया, जो कि इस प्रकरण में महत्वपूर्ण गवाह है और प्रकरण से संबंधित मुख्य आरोपी जीतू उर्फ जितेन्द्र सोनी तथा अन्य आरोपीगण फरार चल रहे हैं। रेसेक्यू की गई महिलाओं व युवतियों पर अनुचित दबाव और साक्ष्य को प्रभावित करने की संभावना को देखते हुए पत्र में यह निवेदन किया गया कि मानव दुर्व्यवहार के उक्त प्रकरण में यह महिलायें और युवतियां विटनेस प्रोटक्शन स्कीम के तहत सुरक्षा की हकदार हैं, इसलिये इस स्कीम के तहत सुरक्षा समिति गठित की जावे।

इसी प्रकार का एक पत्र की प्रति मुख्य न्यायिक दंडाधिकारी, इन्दौर के न्यायालय के माध्यम से प्राप्त हुआ है। पत्रों पर विचार किया गया। प्रकरण की गंभीरता और परिस्थितियों को देखते हुये रेसेक्यू कराई गई युवतियों और महिलाओं की सुरक्षा के लिये समिति गठित किये जाने के लिये संबंधित अपराध की केस डायरी तथा दर्शाई गई महिलाओं के कथन एवं अन्य समस्त प्रपत्र मय डायरी के दिनांक 05. 12.2019 को प्रस्तुत करें। शेख के साथ मेरे निवास पर उपस्थित आये उनके द्वारा रेसेक्यू की गई 67 बच्चीयों/महिलाओं/युवतियों के आवेदन पत्र पेश किये, जिसमें:-

- बालकुमारी श्रेता, 2. रिकु माहेती, 3. अंजली, 4. प्रवीणा बोरकर, 5. प्रतिभा उर्फ प्रीति, 6. मंजू कौर, 7. पूजा विश्वास, 8. शिल्पी, 9. दोईबो की बोक, 10. रंजिता, 11. तगोडी मंडल, 12. साधना, 13. इति उर्फ प्रीति दास, 14. पिंकी मलिक, 15. पूजा हरि, 16. ज्योति, 17. पायल मंडल, 18. प्रियंका विश्वास, 19. उमादास, 20. पायल साहू 21. अनन्या कर्मकार, 22. सुमिता दास चक्रवर्ती, 23. ब्यूटी शाह, 24. स्वीफटी मालाकार, 25. दीप्ति घोष, 26. राखी चक्रवर्ती, 27. मोनी दीपादास, 28. दुम्पा, 29. मुनमुनदास, 30. अमनदीप कौर, 31. मौसमी बाला, 32. मामनदेव, 33. सुषमा, 34. माया विश्वास, 35. सवितादास मुखर्जी, 36. रूपज्योति विश्वास, 37. सुमी विश्वास, 38. प्रभातीसिंह, 39. मोमिता शीला, 40. फुलु हलदार रहमान, 41. बेंदाग उर्फ आसीन, 42. सुलेखा दास मुखर्जी, 43. देवीबाला शेख, 44. दोलोन हलधर पाल, 45. शिल्पी मांडल, 46. साहिबा खातू 47. स्वीमिता कौर, 48. खुखमोनी राव, 49. आशा, 50. झुम्पा, 51. कुमारी पूर्णिमा दास, 52. पार्वती दास, 53. रचना कदम, 54. प्रवीणा, 55. मानूमल, 56. शेता शिल्पकार, 57. झूमा मालाकार, 58. रेखा कौर, 59. मौली कहार, 60. माधुरी विश्वास, 61. मामूनी मालो, 62. सात्वना राय, 63. रूपाली विश्वास, 64. रियासिंग, 65. माम्पी हलधर, 66. पूनम देवांगन, 67. रूपा से संबंधित आवेदन पत्र जिला अभियोजन अधिकारी द्वारा मय नोटशीट के प्रस्तुत किये गये।

इसके साथ ही संबंधित दांडिक न्यायालय में धारा 164 द०प्र०स० के तहत लिपिबद्ध कराये गये पूनम देवांगना, मांपी हलधर की छायाप्रतियां प्रस्तुत की गई हैं।

इस समय केस डायरी प्रस्तुत नहीं की गई है। इसके साथ विटनेस प्रोटक्शन स्कीम 2018 की कापी पेश की गई है। इसके साथ

विटनेस प्रोटक्शन स्कीम 2018 की कापी पेश की गई। कथित स्कीम के अनुसार साक्षियों द्वारा सुरक्षा के आवेदन पत्र लिये जाने के उपरांत कंडिका-6 अनुसार पुलिस अधीक्षक से इस मामले में थ्रेड एनालिसिस रिपोर्ट तलब किया जाना उचित होने से जिला अभियोजन को तथा संबंधित अधिकारियों को निर्देशित किया गया कि प्रकरण से संबंधित पुलिस डायरी तथा थ्रेड एनालिसिस रिपोर्ट प्रस्तुत करने की व्यवस्था सुनिश्चित करें।

06.12.2019

निवास पर

आरक्षी केन्द्र पलासिया इन्डौर से ए एस आई अंतरसिंह सोलंकी के द्वारा उपस्थित आकर केस डायरी केन्द्र पलासिया के अपराध क्रमांक 0496 / 2019 अंतर्गत धारा 370 (3) 346, 120 बी भादवि के अंतर्गत डायरी प्रस्तुत की गयी। जिसका अवलोकन किया गया।

केस डायरी के अवलोकन तथा डायरी के साथ संलग्न दस्तावेजों तथा संबंधित आरक्षी केन्द्र के द्वारा दांडिक न्यायालय में कल दिनांक 05.12.2019 को पूनम देवांगना, मांपी हलधर आदि के कथनों को समग्र रूप से देखे जाने से संबंधित आरक्षी केन्द्र के द्वारा दिनांक 01.12.2019 को मैनेजर जेवरप्रसाद राव, मालिक अमित सोनी, तथा मालिक जीतू सोनी के खिलाफ धारा 370 (3), 346, 120 बी भादवि के अपराध की कायमी की गई है जिसमें अभियुक्त जीतू सोनी मुख्य आरोपी फरार है और उसका फरारी पंचनामा भी संलग्न है। इटनास्थल से रेस्क्यू की गई महिलाओं के कथन तथा उनके आवेदन पत्रों को समग्र रूप से देखे जाने से एवं जीतू सोनी मुख्य आरोपी के फरार होने तथा उसके बंधन में महिलाओं के लम्बे समय से रहने से वे भयभीत हैं और उनकी सुरक्षा को खतरा होना बताया गया है। अतः माननीय सर्वोच्च न्यायालय के न्याय दृष्टांत महिन्द्र चावला विरुद्ध यूनियन आफ इंडियन 2018 एस सी सी, आन लाईन एससी सु0को0 2679 में प्रतिपादित न्यायसिद्धांत के प्रकाश में एवं उक्त न्याय दृष्टांत की कंडिका-36 में दिये गये दिशा निर्देश के क्रम में रेसेक्यू की गई महिलाओं को विटनेस प्रोटक्शन स्कीम के अंतर्गत उनकी सुरक्षा एवं अनुसंधान/विचारण के दौरान उनके निर्भिक रूप से दिये जाने वाले कथनों के संबंध में कमेटी गठित की जाना उचित होगा।

अतः जिला अभियोजन अधिकारी की ओर से कल दिनांक 05.12.2019 को मध्यरात्रि में प्रस्तुत आवेदन पत्र को दृष्टिगत रखते हुये एवं डायरी के अवलोकन उपरान्त वलनरेवल विटनेस डिपोजिशन काम्पलेक्सस, जिनकी अभी सीपना नहीं हो पाई है। अतः माननीय सर्वोच्च न्यायालय के द्वारा उपर उल्लेखित न्याय दृष्टांत के पालन में एवं रेसेक्यू की गई महिलाओं के आवेदन पत्र एवं उनकी सुरक्षा को दृष्टिगत रखते निम्नानुसार कमेटी गठित की जाती है:-

विटनेस प्रोटक्शन स्कीम के अंतर्गत गठित कमेटी में जिला न्यायाधीश, इंदौर/अध्यक्ष, सचिव जिला विधिक सेवा प्राधिकरण, 2. वरिष्ठ पुलिस अधीक्षक एस एस पी श्री रुचिवर्धन मिश्र, /एस एस पी मुख्यालय श्री सूरज वर्मा, 3. जिला अभियोजन अधिकारी को गठित कमेटी में सदस्यों के रूप में शामिल किया जाता है।

माननीय सर्वोच्च न्यायालय के न्याय दृष्टांत महेन्द्र चावला विरुद्ध यूनियन आफ इंडिया 2018 एस सी सी, आन लाईन एससी सु0 को0 2679, के अंतर्गत विटनेस प्रोटक्शन स्कीम की कंडिका-7 में

साक्षीगण की सुरक्षा को दृष्टिगत रखते हुये निम्न शर्ते अधिरोपित की जाती हैं:-

1. यह सुनिश्चित किया जावे कि साक्षीगण/पीड़ित एवं अभियुक्त अनुसंधान/विचारण के दौरान फेस टू फेस, उनका आमना-सामना न हो।
2. अनुसंधान एवं विचारण के दौरान साक्षीगण के नाम (पहचान) की गोपनीयता रखी जावे।
3. साक्षीगण के आने वाले मेल एवं टेलीफोन की मानिटरिंग की जावे। इसके साथ ही साक्षीगण के आपातकालीन सम्पर्क करने वाले व्यक्तियों के नम्बर से भी उन्हे अवगत कराया जावें।
4. साक्षीगण के निवासगृह का क्लोज प्रोटक्शन एवं नियमित उनके निवास की पेट्रोलिंग व्यवस्था भी सुनिश्चित की जावे।
5. साक्षीगण के निकट सबधी के निवास स्थान को भी अस्थाई रूप से परिवर्तित कर दिया जावें।
6. विचारण के दौरान भी इन कैमरा टायल्स रखी जावे।

इसके साथ ही पुलिस अधीक्षक, को भी निर्देशित किया जावे कि वे स्कीम की कंडिका-7 में दिये गये दिशा, निर्देशों का कड़ाई से पालन सुनिश्चित करें एवं साक्षियों को पूर्ण सुरक्षा प्रदान की जावे।

कलेक्टर, इन्दौर को भी उक्त आदेश की प्रति इस निर्देश के साथ भेजी जावे कि वे साक्षीगण (रेसेक्यू की गई महिलाओं एवं उनके साथ रहे बच्चों) के उचित रहवास एवं विटनेस प्रोक्टशन स्कीम में दिये गये निर्देशों का पालन सुनिश्चित करावें।

वरिष्ठ पुलिस अधीक्षक को निर्देशित किया जाता है कि वे थ्रेट एनालिसिस रिपोर्ट/प्रतिवेदन सात दिवस के अंदर कमेटी के समक्ष प्रस्तुत करें ताकि आगामी कार्यवाही सुनिश्चित की जा सके।

(सुशील कुमार शर्मा)
जिला न्यायाधीश, इंदौर/अध्यक्ष
जला विधिक सेवा प्राधिकरण, इंदौर

बी0के0 पालोदा
सचिव, जिला विधिक सेवा प्राधिकरण, इंदौर”

19. The ladies and minor children rescued by the police are safe, they are residing in a shelter home, which is having all kind of facilities, they are being provided proper food and shelter and there is no complaint of any kind in respect of facilities, which have been made available to the ladies.

20. It has also been brought to the notice of this Court that against the owner of 'My Home Hotel', as many as 23

criminal cases have been registered and in the cases relating to crime against women and human trafficking the girls / ladies rescued by the police are the potent witnesses.

21. This Court is having deep concern so far as safety of the women, who are being looked after properly by the Committee, is concerned, and therefore, merely because, the petition in the nature of *habeas corpus* has been filed, this Court does not find any reason to allow the writ petition. No writ of *habeas corpus*, in the peculiar facts and circumstances of the case, can be issued especially when there is no illegal detention and in fact the witnesses have been provided protection and care by the State.

22. The State Government shall make all possible endeavour to ensure that no inconvenience is caused to the witnesses, who are being looked after by the State and the Committee so constituted will ensure that all amenities are provided to the witnesses in question. In case, there is paucity of funds, the Collector, Indore shall make all funds available to the Committee for catering the day to day need of the women, who have been given shelter under the Witness Protection Scheme. This Court does not find any reason to interfere in the matter.

The Writ Petition is accordingly, dismissed.

Certified copy, as per rules.

(AJAY KUMAR MITTAL)
CHIEF JUSTICE

(S. C. SHARMA)
J U D G E

Ravi