

IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION  
WRIT PETITION (CrI.) NO.            OF 2020  
(Under order XXXVIII of the Supreme Court Rules, 2013)

**IN THE MATTER OF: -**

1. Kalyani Badola

2. Tanvi Nair



...Petitioners

Versus

1. The State of Bihar through  
its Chief Secretary, Old  
Secretariat, Patna, Bihar -  
800015
2. Station House Officer,  
Mahila Thana, Araria, -  
854311

3. The Jail Superintendent,  
Dalsinghsarai Jail,  
Dalsinghsarai, Bihar –  
848114 ... Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE  
CONSTITUTION OF INDIA**

TO  
THE HON'BLE THE CHIEF JUSTICE OF INDIA,  
AND HIS COMPANION JUDGES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER HEREIN  
MOST RESPECTFULLY SHOWETH: -

1. The present writ petition is filed under Article 32 of the Constitution of India seeking any appropriate writ, order or direction directing the forthwith release of the Petitioners in Araria Mahila Thana PS Case No. 61/2020 registered against the Petitioners for the offences alleged under the Contempt of Courts Act and u/s 180, 188, 228, 353 and 120B of the Indian Penal Code, 1860, 1860 ("IPC") along with other ancillary reliefs.
- 1A. That the organization Jan Jagran Shakti Sangathan (JJSS), with which the Petitioners are associated, has filed Writ Petition bearing Cr. W. J.C 353/2020 before the Hon'ble Patna High Court seeking *inter alia* an inquiry into the breach

and violation of law, procedure and protocols to be followed in cases of sexual violence against women; as well as the release of the Petitioners. However, the Hon'ble Patna High Court on 23rd July 2020 has declared a vacation until 6<sup>th</sup> August 2020. The Araria District Court on 27th July 2020 extended suspension of functioning until August 3<sup>rd</sup> 2020. An application for urgent hearing has also been denied. Thus, the Writ Petition of the Petitioners that had been filed could not be heard. Further, the Petitioners' bail petition is pending before the Ld. Sessions Judge, Araria, and the same also cannot be listed due to the pandemic. Therefore, the Petitioners are filing the present writ petition under Article 32 of the Constitution of India before this Hon'ble Court as the matter is urgent in nature and pertains to release of the Petitioners from judicial custody to the District Jail in Dalsinghsarai.

- 1B. That in the peculiar facts and extraordinary circumstances as stated above, in which the Petitions mentioned in the preceding para are not being heard, the Petitioners are constrained to approach this Hon'ble Court under Article 32 of the Constitution for protection of their fundamental right to personal liberty and dignity under Article 21 of the Constitution.
2. That both the Petitioners are citizens of India and are social workers with Araria-based NGO Jan Jagran Shakti Sanghtan (JJSS).
3. That the Respondent No. 1 is the State of Bihar through its Chief Secretary, Old Secretariat, Patna. Respondent No. 2 is

the Station House Officer, Mahila Thana, Araria. Respondent No. 3 is the Jail Superintendent, Dalsinghsarai Jail, Dalsinghsarai.

4. That the facts giving rise to filing of this writ petition are as under: -

4.1 That on 6.07.2020, there was an incident of violent sexual attack on Ms.X by four men, who gang raped her, in Araria. Ms. X is a young woman, aged 22 years and is unlettered. She works as a cook in the house of the Petitioners and their friends and has over time built a very trusting relationship with the Petitioners. She considers them her family and confidants.

4.2 That after the incident on the night of 06.07.2020, Ms X telephoned Petitioner No. 1 in a distraught state and asked for her help to take her from the bus stand where she was alone and feeling unsafe. It was clear on the telephone itself that X had undergone some traumatic experience. Over the course of the night, X related her trauma to the Petitioners and at the same time repeatedly said that she did not want to go home, but rather wanted them to hand hold her during this distressing period. The medical examination was conducted between the evening of 07.07.2020 and the morning of 08.07.2020 and FIR was registered as Araria Mahila PS Case No. 59/2020 was also registered. No Covid test was conducted even though she had been gang-raped by several strangers.

4.3 That the survivor Ms. X was completely distraught. She was not eating or sleeping properly, and also in immense

physical pain.

- 4.4 That through her medical examination, conducted between the evening of 07.07.2020 and the morning of 08.07.2020, the Petitioners were with her as she required emotional support.
- 4.5 In the course of the next two days, that is, 7.07.2020 - 8.07.2020, she was made to repeat her experience many times, often only for voyeuristic purposes. She was dependent, emotionally, on the Petitioners since the incident.
- 4.6 On 10.07.2020, Ms X was summoned for the purposes of recording her statement u/s 164 CrPC. Fearful and distressed she requested the Petitioners to accompany her to the court. The Investigating Officer walked her to the District Court complex, accompanied at some distance by the Petitioners herein, who had been instructed to not speak with her until her statement was recorded. The victim was taken into the Magistrate's chambers and gave her statement to the Magistrate. When the statement was being read over to her, the victim expressed some concerns about not understanding the statement as read out by the Magistrate and requested that the Petitioners be allowed to come in and read out the statement to her. Given her emotionally precarious condition, Ms. X repeatedly asked for the Petitioners to be called into the chamber of the Learned Magistrate. The Learned Magistrate, unfortunately, mistook the victims her anxiety as 'distrust' and also as a personal affront. The Learned Magistrate, and

made strong adverse remarks about the gang rape survivor's behaviour. The victim went to the corridor and expressed her anxieties to the Petitioners. The Petitioners then approached the Ld. Magistrate and tried to explain why the gang rape survivor should not be blamed and requested for sensitivity to be shown towards X's circumstance. The Ld. Magistrate kept insisting that the victim simply sign the statement, while the Petitioners tried to persuade the judicial officer that it be again read out and explained to her. The Learned Magistrate unfortunately mistook this as a criticism of the Court, refusing to listen to any explanation he remanded all three persons to police custody.

- 4.7 Within hours, distorted, sensationalised and exaggerated accounts of what had transpired during the proceedings were reported on electronic media, together with complete identifying details of the victim of gang rape, Ms. X, including her father's name and address being published in direct and grave violation of Section 228A IPC.
- 4.8 That it is stated that the gang rape survivor Ms. X and her support persons, the two Petitioners were all emotionally, mentally stressed and strained, and had at no point meant or displayed any disrespect to the Court.
- 4.9 That the friends of the Petitioner made repeated enquiries at the Mahila Police Station about the whereabouts of the three persons detained. They were informed that there was no FIR registered against them.
- 4.10 That in the meanwhile, in the evening of the same day, i.e

10.07.2020, electronic media carried news reports, which quoted the Court staff as having informed the reporter about the alleged incident that took place during in-camera proceedings before the Learned Magistrate. Pertinently, the said reporter's Facebook post also carried a photograph of the reporter, inspecting a file, surrounded by Peshkar of the Learned Magistrate's Court and other staff. It is relevant to note that the said reporter is also a practicing advocate

True and translated copy of the Facebook Post dated 10.07.2020 of Mr. Binit Prakash is annexed herewith and marked as **ANNEXURE P/1 [Pages 34 to 35]**.

- 4.11 The next morning, all Hindi dailies carried an exaggerated and erroneous report wherein the Court staff was quoted stating that Ms.X and Petitioner no. 1 had attempted to grab the document bearing the 164 CrPC statement of the gang rape victim. It is submitted that this is a complete misstatement of facts and seeks to wilfully distort and project the incident in the media. Alarming, in grave breach of the law several Hindi newspapers also disclosed the name, complete address and other identifying details pertaining to the gang rape victim in clear violation of Section 228A of the Indian Penal Code. The news reports cite the Peshkar as having provided information relating to Ms.X. The news reports dated 11.07.2020 also state that on enquiries made at the concerned Police Station it was found that no FIR had been registered yet against the Petitioners and the gang rape victim. True translated copies of the Newspaper Report published in Prabhat Khabar

dated 11.07.2020 and Newspaper report published in Hindustan dated 11.07.2020 are annexed herewith and marked as **ANNEXURE P/2 [Pages 36 to 38]** and **ANNEXURE P/3 [Pages 39 to 40]**.

- 4.12 That at around 12.30 PM on 11.07.2020 two friends of the Petitioners, who had been waiting outside the Police Station precincts for some information on the status of the Petitioners and Ms.X were called in and asked to sign on a blank Arrest Memo form. They requested the police to provide them with more information, however the police refused and insisted that they sign. It was only then that it became clear that an FIR had been registered against the Petitioners and Ms X and the three had been placed under arrest. The Petitioner and victim were not informed of the F.I.R or the provisions under which it was filed until they were produced before the CJM and saw it on the search and seizure memo from which they learnt of the FIR number and the sections that they were arrested under, viz. Sections 353, 228, 180 and 188 read with 120B of the Indian Penal Code and under the Contempt of Courts Act, 1971. Subsequently, all three were produced at the residence of the learned CJM, and remanded to judicial custody.
- 4.13 That the State of Bihar is in lockdown and as per Circular dated 13.07.2020, all functioning with the exception of 'remand and release' have been suspended in the District Courts. In the circumstances and even after several attempts, access to the District Courts to procure certified



copies of the two FIRs, that is, Araria Mahila PS Case No 59/2020 and Araria Mahila PS Case No. 61/2020 (neither has been given to the survivor), has not been possible. However copies of the FIR are now available in the public domain over electronic media.

True translated copy of the F.I.R. bearing Araria Mahila P.S. Case No. 61/2020 dated 10.07.2020 is annexed herewith and marked as **ANNEXURE P/4 [Pages 41 to 50]**.

- 4.14 That the conduct of the gang rape survivor Ms. X and the two Petitioners did not at any point of time transgress the bounds of law, nor was it in any way meant to show disrespect to the dignity of the Court; rather it was the gang rape survivor's own insecurity, mental trauma, feeling of helplessness and uncertainty that caused her to seek another reading of her 164 statement. At no point did Ms. X or the two Petitioners seek to, or attempt to, tear the Section 164 CrPC statement, or cause obstruction, or impediment in any judicial proceeding.
- 4.15 That the arbitrary and disproportionate punishment meted out to the survivor and the Petitioners displays a lack of sensitivity, and an ignorance of emerging jurisprudence on engagement with survivors of sexual violence in the criminal justice system, at best. At worst, it shows *mala fide* in the way a distorted, wrong and exaggerated narrative of the incident was run in the local press setting the stage for penalising the gang rape survivor, Ms.X and the Petitioners acting as her support persons.

4.16 That Circular dated July 13<sup>th</sup> 2020 was notified suspending the regular functioning of subordinate Courts in Araria. However, a bail application was heard in a special hearing in G.R. No. 2494/2020 in Araria Mahila P.S. Case No. 61/2020 on July 17<sup>th</sup> 2020, for all three detainees, whereby the survivor was granted bail, but the Petitioners herein were denied bail.

True copy of the Order dated 17.07.2020 in G.R. No. 2494/2020 in Araria Mahila P.S. Case No. 61/2020 passed by Court of C.J.M, Araria is annexed herewith and marked as **ANNEXURE P/5 [Pages 51 to 54]**.

4.17 That the FIR against the Petitioners is arbitrary, untenable and does not make out non-bailable offences requiring their incarceration.

4.18 That the continued detention of the Petitioners, who are the support providers and confidants of the gang rape survivor, and the resultant separation is further aggravating the trauma of the already distraught victim.

4.19 That a bail petition was filed by the present petitioners before the Sessions Court on 20<sup>th</sup> July, but on that same date all functioning of the Court was further suspended until 27<sup>th</sup> July. It has now been extended a third time till 3<sup>rd</sup> August.

True copy of Order bearing Misc. Order No. 155/2020 dated 13.07.2020 passed by District & Sessions Judge, Araria is annexed herewith and marked as **ANNEXURE P/6 [Page 55]**. True typed copy of Order bearing Misc. Order No. 158/2020 dated 20.07.2020 passed by District &

Sessions Judge, Araria is annexed herewith and marked as **ANNEXURE P/7 [Pages 56]**.

- 4.20 That a writ petition was also filed and numbered as Cr. W. J.C 353/2020 at Patna High Court, but an application for urgent listing was denied in view of the Covid-situation.
- 4.21 At the same time the Hon'ble High Court also asked for a report on the incident from the learned District Judge, Araria, and took Suo Motu notice and instituted Cr.W. J.C 355/2020. The matter was listed on several days but could not be taken up.
- 4.22 That the Hon'ble High Court is now closed until 6<sup>th</sup> August. An application seeking permission to file a bail application before the Hon'ble High Court in view of suspension of work at the Araria District Court was also denied
- True Copy of Notice titled 'Mentioning with regard to Pending cases on 22.7.2020' dated NIL issued by Patna High Court is annexed herewith and marked as **ANNEXURE P/8 [Pages 57 to 59]**. True Copy of Notice dated 22.07.2020 issued by Registrar General, Patna High Court is annexed herewith and marked as **ANNEXURE P/9 [Pages 60]**. True Copy of Notice titled 'Mentioning with regard to extremely urgent – hearing of the matter / cases on 23.07.20' dated NIL issued by Patna High Court is annexed herewith and marked as **ANNEXURE P/10 [Pages 61 to 65]**.
- 4.23 Registrar General, High Court of Patna further extended the suspension of work of Courts in Patna vide Letter No.

39767-803 dated 26.07.2020

True copy of the Letter No. 39767-803 dated 26.07.2020 issued by Registrar General is annexed herewith and marked as **ANNEXURE P/11 [Page 66]**.

4.24 Hence, the present Writ Petition.

## 5. GROUNDS:

That the prayers sought in the present petition are based on, inter alia, the following grounds, which are taken without prejudice to one another:

- A. Because the present petition seeks to protect the Fundamental Rights of the Petitioners - to dignity, liberty and access to justice, as guaranteed under Articles 14 and 21 of the Constitution of India.
- B. Because Courts in the State of Bihar are not able to function due to the serious Covid spread. The bail petition of the present petitioners, assailing the Order dated 17.07.2020 passed by the Ld. CJM, Araria, has been pending before the Sessions Court since 20th July, 2020, but the Court has had to suspend work effectively *infinitum*, subject to the spread of the pandemic. The latest notification dated 27th July 2020 has extended the period of suspension until 3rd August, 2020.
- C. Because a Writ Petition numbered Cr.W. J.C 353/2020 had been filed before the Patna High Court, but an application for its urgent listing was denied since Patna High Court as per notification dated 23rd July 2020, is closed until 6<sup>th</sup> August 2020. It is relevant to mention here that the Hon'ble High

Court had also taken Suo Motu notice of the incident and asked for a report from the learned District Judge, Araria. The same was listed as Cr.W.J.C 355/2020, but also could not be taken up. An application to file a bail petition before the Hon'ble High Court, in view of the suspended functioning of the Sessions Court till 3rd August 2020 was also denied.

- D. Because the right to access justice is a recognized and indispensable facet of the right to life under Article 21 of the Constitution of India, as well as the right to equal protection of laws under Article 14 and the right to constitutional remedies under Article 32 of the Constitution of India.
- E. Because the registration of FIR against a victim of gangrape and the Petitioners for expressing anxiety and apprehension is not only a disproportionate and harsh approach to their bonafide concerns but also bad in law being in breach of the statutory requirements of the provisions invoked in Araria Mahila PS Case No. 61/2020. The FIR on the basis of which the three persons were arrested and sent to jail is without jurisdiction or authority of law.
- F. Because the FIR registered at Araria Mahila Thana, Case No. 61 of 2020, is not maintainable in law and deserves to be quashed as there is a statutory bar against police investigating criminal contempt of court. Section 15(2) of the Contempt of Courts Act, 1971, categorically provides that in the case of a criminal contempt of a subordinate court, action can only be taken by the High Court. A subordinate court may make a reference to the High Court for initiating action for criminal

contempt, but the subordinate court itself cannot take action against the alleged contemnor, nor can the police register a criminal case under provisions of The Contempt of Courts Act, 1971.

- G. Because the fact of registration of a FIR under provisions of The Contempt of Courts Act, 1971, itself reveals that the said FIR has been registered without due application of mind and speaks of overzealousness and arbitrary exercise of power. This vitiates the FIR and all consequent proceedings emanating from the same.
- H. Because the gang rape victim and the Petitioners had moved a joint bail petition on 15.07.2020, which was heard by the Learned CJM, Araria. By a common order dated 17.07.2020, the gang rape victim Ms.X was granted bail, but the Petitioners bail plea was rejected. It is respectfully submitted that their continued incarceration and curtailment of personal liberty is untenable in law and facts and without judicious application of mind.
- I. Because the order dated 17.07.2020, passed by the Ld. CJM, Araria, is untenable in law, being against all settled judicial principles that must govern bail proceedings. The said order makes no finding qua the need for curtailing the Petitioners' liberty at the stage of investigation, instead it attempts to justify undertrial detention as a deserved punishment for the alleged contempt of court. It is thus contrary to the celebrated canon of jurisprudence - "*Bail is the rule and jail is the exception.*" Reliance is placed herein on *Sanjay Chandra vs CBI* (2012) 1 SCC 40, *DK Basu vs State of West Bengal*

(1997) 1 SCC 416, *Gurcharan Singh & Ors. vs State (Delhi Administration)* (1978) 1 SCC 118, etc.

- J. Because Section 41A as inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), which is relevant to ensuring the cooperation and attendance of the accused at the time of investigation, reads as follows:

**“41A. Notice of appearance before police officer.-**  
*(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

If an accused person complies with the notice(s) issued under Section 41A CrPC, there should not be any arrest, which is only to be used as the last resort. In the present case, no notice under Section 41A CrPC was issued, and arrest was used as the first resort, contrary to the scheme of the amended Cr.P.C.

- K. Because the Hon’ble Supreme Court of India in *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273 has categorically laid down that arrest should only be made as a last resort and only where it is necessary to ensure that the accused person does not evade the proceedings. It has also held that Section 41A Notice(s) are to be issued to accused persons before the power of arrest is considered. Further, during the Covid-19 pandemic, which is presently spreading virulently across the State of Bihar, it is alarming that the two Petitioners remain

in jail. The district of Samastipur, where they have been lodged has seen several deaths. It cannot be disputed that they present no danger to society, have clean antecedents and their arrest and incarceration is against the settled jurisprudence on arrest of the Hon'ble Supreme Court.

L. Because prima facie no cognizable or non-bailable offence is discernible from the complaint filed against the petitioners, and the said FIR is unsustainable in law in view of the settled law as laid down in **State of Haryana vs Bhajan Lal & Ors. 1992 AIR SC 604** and a catena of judgments of the Apex Court.

M. Because the only non-bailable provision mentioned in the said FIR is Section 353 IPC which is not made out against the Petitioners. Assault or use of criminal force is a prerequisite for an offence under Section 353, ingredients of which are absent in the facts of the present case. Nowhere in the FIR has it been alleged that the petitioners "made any gesture/preparation" that would cause anyone to apprehend that they were about to "use criminal force" or force to "any person". It is an established understanding that mere words, unaccompanied by any gesture, do not amount to assault. Apart from allegations of Petitioners using uncalled for language and demanding re-recording of the statement, there is only one allegation of a gesture/act, not merely words, attributed to the Petitioner No. 1. This pertains to an alleged act where allegedly she is said to have taken the statement, or as described in the FIR, "*kabze mein le liya*". It is not once alleged that she used force on someone's person or even that



she snatched the statement from someone. In fact, while describing the retrieval of the statement from the Petitioner no. 1, the first Informant has specifically alleged that somehow the statement was taken in possession "from her hands" or "*Kalyani ke haath se apney kubzey mein le liya.*" It is submitted that the Petitioner never took away the statement. Hence, Section 353 IPC offence is not applicable, and on this ground alone, the Petitioner ought to be released.

N. Because no offence under Section 188 IPC is made out as even *prima facie* there is no order duly promulgated by public servant, in the absence of which, the Petitioners could not have disobeyed such an order. Further, Section 180 IPC is not applicable against the Petitioners as it is in relation to refusal of signing a statement by the survivor, in a situation where she was repeatedly stating that she had not understood the contents of the recorded statement as it was read out to her. Moreover, there was no intentional insult or interruption caused by the Petitioners to the judicial proceeding; as upon being asked to enter the court, and upon being asked why the survivor was doing 'badtameezi', they had merely attempted to explain the mental state of the survivor and the possibility of her not having understood the contents of the statement. Hence, no offence under Section 228 is made out. Finally, the offence of criminal conspiracy, which requires an agreement among the accused, is also not made out as there is no allegation or statement in the FIR reflecting such agreement of minds.

- O. Because although the survivor has been granted bail on “humanitarian grounds”, the Learned CJM has erred in not extending the same to the two Petitioners, as even more anxiety and trauma is being caused to the survivor as she is now separated from her two primary support givers. She is completely reliant on them and only trusts them at the moment.
- P. Because the learned CJM’s Order of 17.07.2020 also repeatedly discloses the name of the victim of gang rape. The Hon’ble Supreme Court in *State of Karnataka v. Puttaraja* [(2004) 1 SCC 475] held that in keeping with the social object of preventing social victimization or ostracism of the victim of sexual offences, it would be appropriate for the Supreme Court, High Court or lower Courts not to indicate the name of the victim. Similar view has been taken by the Hon’ble Supreme Court in a series of judgments, including *State of Punjab v. Ramdev Singh* [AIR 2004 SC 1290], *Satya Pal Anand v. State of M.P* [(2014) 4 SCC 800], *Dinesh v. State of Rajasthan* [(2006) 3 SCC 771], *Om Prakash v. State of U.P.* [(2006) 9 SCC 787] and *Lalit Yadav v. State of Chhattisgarh* [(2018) 7 SCC 499].
- Q. Because this Order of the Ld. CJM Araria dated 17th July 2020 (Araria Mahila P.S. Case No.- 61/2020 G.R. No.- 2494/2020) demonstrates the need for the intervention of the two Petitioners on behalf of a victim of sexual violence, and confirms that their intervention was bonafide. In a shocking breach of statute and public policy, the Order by the Ld. CJM Araria, names the victim of gang rape, in multiple places in

the order. The Order names the victim of gang rape in express breach of S.228A IPC, despite the earlier incidents of disclosure of identity of the victim of rape being expressly brought to the attention of the Ld. CJM, the same being recorded in the order.

- R. Because the court staff plainly and brazenly violated the law by disclosing for publication the full identity of the survivor, including her name, her father's name and her full address.
- S. Because the case of the Petitioners is that they are completely innocent and the offences as registered in the F.I.R. are not made out against them. Events that transpired on the day of the recording of the statement under Sec. 164 CrPC of the gang rape survivor have not been correctly presented by the Informant, and facts have been distorted, fabricated, misinterpreted and exaggerated to the detriment of the Petitioners who were merely extending support to the traumatized rape survivor.
- T. Because the apprehensions of the victim of rape need to be appreciated in the facts and circumstances of the situation. The law too recognises that as far as possible the statement of a rape victim be recorded before a woman judicial Magistrate. In *Mohd. Haroon v. UoI SC 2014 (5) SCC 252* the Hon'ble Supreme Court directed that the statement under Section 164(5A) of 7 victims of gang rape be recorded before a lady Magistrate, despite the fact that they had already been recorded before a male magistrate.

- U. Because the conduct of the victim and her support persons have to be appreciated in the circumstances of the particular situation. When the rape victim appeared in Court, the male court staff crowded around and even asked Ms X questions about the sexual assault.
- V. Because the allegation of uncalled behaviour, threatening the presiding officer and demanding re-recording of the statement of the survivor is completely false and baseless. It is even otherwise highly improbable that in the presence of several male court staff, that also included security personnel and bodyguards, the petitioners, all women, could indulge in such behaviour. Further, it is impossible that the Petitioner no.1 could access the papers bearing the 164 Cr.P.C statement, take it away and also attempt to tear it, all in the presence of the court staff and security personnel, and with no damage being caused to the document.
- W. Because the Learned Magistrate completely misinterpreted the survivor's distraught state of mind as showing disrespect to him or his Court.
- X. Because the intervention by the Petitioners, who were accompanying the survivor, did not amount to deterring the Learned Magistrate from discharging his duties.
- Y. Because the registration of FIR against a gang rape victim and the Petitioners for expressing their anxiety before the Ld. Magistrate fails to appreciate the impact of rape on the emotional and mental state of the victim. Anxiety or uncertainty expressed by a victim of rape cannot not be read

as a personal insult, or as an aspersion cast on the judicial officer. In light of the gang rape committed upon her, it is natural for the victim to have been overwhelmed, extremely traumatised as also wary about trusting persons unknown to her. It must also be kept in mind that the victim of gang rape is illiterate and of humble origins. In a post gang rape condition, victims of sexual violence and women are known to be overwhelmed by or display anxiety that may be misread as distrust. It was in these circumstances that the victim requested the two activists whom she trusts and knew to accompany her to the police station and the court.

- Z. Because the rape victim's anxiety to have the Petitioners present has been misunderstood as an affront to the integrity of the magistrate. In recognition of the concept of "re-victimisation" and trauma experienced by women victims of rape, Criminal law, procedure, other guidelines and jurisprudence have expressly introduced the concept of a "support person" for the support of the victim throughout her interface with the criminal justice system, from investigation to trial. The, Ministry of Women and Child Development in its "DETAILED REFERENCE MATERIAL ON STANDARD OPERATING PROCEDURES FOR ONE STOP CENTRE" provides for such support persons,

*"Case worker is the first point of contact for a woman/ girl reaching the OSC. The case worker shall be a woman and she shall provide immediate crisis intervention services along with psycho social support to the woman/ girl affected by violence. Caseworker with the support from Centre Administrator will also coordinate services with the para medical worker, lawyer from DLSA, police personnel*

*for required services. Case workers will work in shift and will be available at the OSC round the clock.”*

AA. Because the need for a support person for a victim of sexual violence, even during trials and recording of evidence has been recognised and provided for in the Criminal Procedure Code. The Code of Criminal Procedure carves out an exception to the principle of open courts and provides for in-camera trial in cases of rape; and in furtherance of the same objective allows a support person to accompany the rape victim to ensure that the legal proceedings do not trigger further trauma and lead to revictimisation.

**“S. 327. Court to be open.—**

...

(2) Notwithstanding anything contained in sub- section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860)] shall be conducted in camera:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court.

Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.”

The United Kingdom too has incorporated such a provision. Part 7 of the *CPS Policy for Prosecuting Cases of Rape* on “Helping victims and witnesses to give evidence”, provides:

*“29. When a witness is concerned and worried about going to court and giving evidence, a member of*

*the Witness Service may be permitted to accompany the witness into court, to give support. If the witness has had support from other agencies a member of that support service (for example, Women's Aid or an IDVA) may also be permitted to accompany the witness into court.*

...

34. *Witness Care Officers will manage the care of the victim from the first hearing in the magistrates' court right up until the final hearing and will liaise with the Witness Service to arrange pre-trial visits. In addition, they will ensure that the victim is provided with support following the finalisation of the case. Where someone is convicted of a sexual offence and is given a sentence of imprisonment or detention of 12 months or more, the Witness Care Unit will speak with the victim about referring them to the National Probation Service Victim Contact Scheme and provide them with a leaflet regarding the scheme. The scheme enables victims to make representations about what licence conditions or supervision requirements the offender should be subject to on their release. Thereafter, those operating the scheme will ensure that the victim is informed of the conditions imposed.*

35. *This is a ten point Pledge that describes the level of service victims can expect to receive from prosecutors. The Prosecutors' Pledge ensures that the specific needs of victims and witnesses are addressed; that they are assisted at court to refresh their memory from their written statement or video interview; and that they are protected from unwarranted or irrelevant attacks on their character."*

**BB.** Because the FIR displays a misplaced approach to the role of the Petitioners, who were present to give support to the victim of gang rape, especially since she is illiterate. The need for external, non-state actors for support of victims of identity-based crimes and victims from marginalised groups,

is recognised in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well. Section 15A inserted through 2015 amendment, on “Rights of Victims and Witnesses” provides that,

*“ (12) It shall be the right of the atrocity victims or their dependents, to take assistance from the Non-Government Organisations, social workers or advocates.”*

In cases of sexual violence, this need is particularly acute when victim support services that are to be provided by the State, like One Stop Crises Centres, counselling, support person are unavailable or inaccessible.

6. Petitioner craves leave to add, amend or modify any of the aforesaid grounds.

**PRAYER**


Wherefore in light of the above, the Petitioner herein most humbly pray that this Hon'ble Court may be pleased to:

- i) To issue any appropriate writ, order or direction in the nature of Mandamus directing the forthwith release of the Petitioners on bail in Araria Mahila Thana PS Case No. 61/2020; and
- ii) To issue any appropriate writ in the nature of Mandamus or any other appropriate writ order or direction commanding the Respondents not to take any coercive action against the Petitioners in connection with the Araria Mahila Thana PS Case No. 61/2020; and/or
- iii) For grant of any other relief in the interest of justice, equity and good conscience



AND FOR THIS ACT OF KINDNESS THE PETITIONER  
AS IN DUTY BOUND SHALL EVER PRAY

DRAWN BY  
Ratna Appender,  
Soutik Banerjee  
Advocates

FILED BY:  
  
MS. LIZ MATHEW  
ADVOCATE FOR THE PETITIONER

SETTLED BY:  
Vrinda Grover  
Advocate

New Delhi

DRAWN ON: 29.07.2020

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