Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19483 of 2021

Applicant :- Jai Hind @ Babu
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Sanjay Mishra
Counsel for Opposite Party :- G.A.,Mohd Achhay,Pradeep Kumar

Hon'ble Ajay Bhanot,J.

Instructions available with Shri I. P. Srivastava, learned AGA do not show the compliance of the directions issued by this Court in **Criminal Misc. Bail Application No. 46998 of 2020 (Junaid Vs. State of U.P. and another)**. Prima facie the police authority has not only disobeyed the orders passed by this Court in **Junaid (supra)** but has also undermined the rights of the victim. CWC has also not entered appearance before this Court. Instructions sent by the local police do not show the compliance of the directions of this Court in **Junaid (supra)**. The directions issued in **Junaid (supra)** are extracted hereinunder:

"A. Functions of local police/SJPU:

I. To inform the CWC about the offence within 24 hours of its registration.

II. To serve the notice of bail application upon the child and intimate the date of hearing of the bail application to it.

III. Apprise the child of its rights to information and

services under the POCSO Act, 2012 and POCSO Rules, 2020 and as detailed in Form A.

IV. Inform the CWC about the need of the child for free legal aid.

V. Produce the child before CWC when required under law. Prepare and submit reports as provided under the POCSO Act, 2012 read with POCSO Rules, 2020 including one Form A and in Form B to the CWC.

VI. To provide instructions to the Government Advocate in the High Court and DGC (Criminal) in the trial courts before hearing of the bail application. These will also include the report of service of bail application upon the victim, copies of Form B and information given to CWC, and report of information given to the child regarding entitlements under the POCSO Act, 2012 read with POCSO Rules, 2020 as detailed in Form A."

There are no instructions with the learned AGA from the C.W.C. The directions to the CWC in **Junaid (supra)** are extracted hereunder:

"B. Functions of CWC:-

I. Receive information and documents from the police and take appropriate action thereupon as provided in the POCSO Act, 2012 read with POCSO Rules, 2020.

II. To apprise the child of its entitlements under the POCSO Act, 2012 read with POCSO Rules, 2020.

Identify the person who would be best suited to protect the interests of the child and receive notices of the legal proceedings on its behalf from amongst the following persons: child's parents/guardian/any other person in whom the child has trust and confidence or appoint a support person for the child whenever required.

III. To prepare reports and coordinate with the police and various government agencies for providing information and services entitled to the child.

IV. To coordinate with the DLSA and HCLSC to provide free legal aid in appropriate cases to the child at the District Court and High Court respectively.

V. Disclose to the High Court as well as the trial court the status of entitled information and services including free legal aid provided to the child and submit relevant reports when the bail application is placed before the Court."

This Court finds that in all cases pertaining to the POCSO Act read with POCSO Rules, the directions issued by this Court in Junaid (supra) have not been complied with by the local police as well as the CWC of the concerned district. Though in all fairness it appears that Director General of Police, State of U.P., has issued specific directions to his forces to comply with the judgement rendered in **Junaid (supra)**. However, the directions of the Director General of Police, State of U.P., are being observed more in

breach. The police is a disciplined force. In case police officers fail to obey the lawful command of their superior here like D.G.P., they are liable to be proceeded against as per law. It is a matter of grave concern for the Court that the disobedience of orders passed by this Court in Junaid (supra) has effectively frustrated the legislative intent of enacting the POCSO Act read with POCSO Rules.

The Director General of Police, State of U.P., shall file his personal affidavit in all connected cases regarding the cause for failure to comply with the directions of this Court in **Junaid (supra)** and the action taken against the concerned officials.

Similarly this Court finds that C.W.C. is not even represented before this Court. It is not clear whether CWC has complied with the directions of this Court and implemented the protection to the victim by POCSO Act read with POCSO Rules. The learned AGA has no instructions in the matter.

The Principal Secretary, Child Welfare Department, Government of U.P., shall file a personal affidavit in this regard. The Principal Secretary, Child Welfare Department, Government of U.P., has to take appropriate action to ensure that the directions of this Court in **Junaid (supra)** as well as the legislation made by the Parliament and the directions of the State Government through the Principal Secretary, Child Welfare Department, Government of U.P., are

implemented in letter and spirit by the C.W.Cs. of the concerned districts. Action taken against the defaulting C.W.Cs. of the concerned districts, shall also be disclosed in the affidavit.

Considering the enormity of the problem, the Court has requested Shri M. C. Chaturvedi, learned Additional Advocate General to assist the Court. Shri M. C. Chaturvedi, learned Additional Advocate General for the State shall take instructions from the Director General of Police, Government of U.P.; Principal Secretary, Child Welfare, Department, Government of U.P., and other other officials and also independently assist the Court regarding the manner of ensuring faithful implementation of the POCSO Act read with POCSO Rules in the State of U.P.

Put up this case on 08.12.2021 in the list of fresh cases.

Order Date :- 22.11.2021
Dhananjai