

मुख्यालय पुलिस महानिदेशक, उत्तर प्रदेश

1- बी0एन0लहरी मार्ग, लखनऊ-226001

संख्या-डीजी-परिपत्र संख्या-68 /2013

दिनांक:लखनऊ:नवम्बर ०९ 2013

सेवा में,

- 1-समस्त जोनल पुलिस महानिरीक्षक, उत्तर प्रदेश ।
- 2-समस्त परिक्षेत्रीय पुलिस उपमहानिरीक्षक, उत्तर प्रदेश ।
- 3-समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक उत्तर प्रदेश ।

विषय: बेल संख्या-465/2013 राकेश कुमार सिंह बनाम उ०प्र० राज्य व अन्य के परिप्रेक्ष्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 11-5-2012 का अनुपालन किये जाने के सम्बन्ध में ।

.....

कृपया उपर्युक्त विषयक मा० उच्च न्यायालय, लखनऊ खण्डपीठ के आदेश दिनांक 11-5-2012 के परिप्रेक्ष्य में उ०प्र० शासन द्वारा अपने पत्र संख्या-3002/छ:-पु-9-13-31(35)/2013 दिनांक 18-11-2013 द्वारा कड़ाई से अनुपालन किये जाने तथा अनुपालन से तत्काल अवगत कराये जाने की अपेक्षा की गयी है ।

2- मा० उच्च न्यायालय, लखनऊ खण्डपीठ के आदेश दिनांक 11-5-2012 के प्रभावी अंश निम्नवत् है:-

12. The case on behalf of the investigating agency has been reflected through an affidavit sworn by a police official/public servant who is required to project correct facts before this Court. Affidavit filed by a Public Servant holding responsible position is accepted as evidence by a court of law. The narration in an affidavit filed in criminal proceedings needs to be based on facts drawn from record. While adjudicating, the facts given to the Court are to be considered. If false or misleading/non existent facts are given, the result would be injustice. It appears that the respondent State is behaving like persecutors and not prosecutors.

13. The Hon'ble Supreme Court of India has taken into account the duties of a public prosecutor in (1999) 4 SCC 602 : Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others. The following has been said in relevant portion of para 23 of the judgment :-

"A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation."

15. In context of the law as laid down by the Hon'ble Supreme Court of India, it transpires that prima facie, the respondent State has indulged in persecuting. In the opinion of the Court, ideal practice would be for the Public Prosecutor to draft a document, on the basis of material available on record, and file it in the Court.

16. Considering both the aspects of the case, it is directed that an enquiry in the case would be held by a responsible officer to be appointed by the Secretary (Home), Government of U.P.

17. After enquiry, if the official through whom the affidavit has been filed is found to have given incorrect facts, appropriate departmental action be taken.

3- प्रकरण में मा0 उच्च न्यायालय द्वारा यह आदेशित किया है कि जो भी प्रतिशपथ पत्र मा0 न्यायालय में दाखिल किये जायें वे पूर्णतः पुष्ट तथ्यों पर आधारित हो और यदि प्रतिशपथ पत्र तथ्यों के विपरीत पाया जाता है तो सम्बन्धित के विरुद्ध यथोचित विभागीय कार्यवाही की जाय।

4- अतः मा0 उच्च न्यायालय के आदेश के परिप्रेक्ष्य में उ0प्र0 शासन के पत्र संख्या-3002/छः-पु-9-13-31(35)/2013 दिनांक 18-11-2013 जिसकी प्रति पत्र के साथ संलग्न की जा रही है, के द्वारा की गयी अपेक्षानुसार यह निर्देशित किया जाता है कि मा0 न्यायालयों में जो भी तथ्य प्रतिशपथ पत्र के माध्यम से प्रस्तुत किये जायें वे सत्य/पुष्ट हों । यदि कोई ऐसा दृष्टान्त प्रकाश में आता है कि मा0 न्यायालय में गलत तथ्यों के आधार पर प्रतिशपथ पत्र दाखिल किया गया हो तो सम्बन्धित अधिकारी उसके लिए व्यक्तिगत रूप से उत्तरदायी होगा और उसके विरुद्ध नियमानुसार विभागीय कार्यवाही सम्पादित करायी जाय ।

संलग्नक-उ0प्र0 शासन के पत्र संख्या-3002/छः-पु-9-13-31(35)/2013 दिनांक 18-11-2013 की प्रति ।

(देवराज नागर) 9.12.13

पुलिस महानिदेशक

उत्तर प्रदेश।

प्रतिलिपि श्री कमल सक्सेना, सचिव, गृह(पुलिस)अनुभाग-9, उ0प्र0 शासन लखनऊ को उनके पत्र संख्या-3002/छः-पु-9-13-31(35)/2013 दिनांक 18-11-2013 के संदर्भ में सूचनार्थ प्रेषित ।

14485

मा0 न्यायालय प्रकरण / शीर्ष प्राथमिकता
संख्या-3002 / छ:-पु0-9-13-31(35) / 2013

1344
21/11 प्रेषक,

कमल सक्सेना,
सचिव,
उत्तर प्रदेश शासन।

सेवा में,
महानिदेशक अभियोजन,
अभियोजन निदेशालय,
उ0प्र0लखनऊ।

गृह(पुलिस)अनुभाग-9 लखनऊ: दिनांक:-18 नवम्बर, 2013
विषय:- बेल नं0-465 / 2012 राकेश कुमार सिंह बनाम बनाम उ0प्र0 राज्य व
अन्य के संबंध में।

G/PC महोदय,

~~21/11/13~~
11/10 उपर्युक्त विषयक मा0 मा0 उच्च न्यायालय इलाहाबाद, खण्डपीठ
लखनऊ के आदेश दिनांक-11.05.2012 (छायाप्रति संलग्न) का कृपया सन्दर्भ
ग्रहण करने का कष्ट करें।

2- बेल नं0-465 / 2012 राकेश कुमार सिंह बनाम बनाम उ0प्र0 राज्य व
अन्य में मा0 उच्च न्यायालय, लखनऊ द्वारा दिनांक-11.05.2012 को पारित
आदेश के मुख्य अंश निम्नवत् है:-

12. The case on behalf of the investigating agency has been reflected through an affidavit sworn by a police official/public servant who is required to project correct facts before this Court. Affidavit filed by a Public Servant holding responsible position is accepted as evidence by a court of law. The narration in an affidavit filed in criminal proceedings needs to be based on facts drawn from record. While adjudicating, the facts given to the Court are to be considered. If false or misleading/non existent

SPO
[Signature]

[Signature] Put up with file
21/11/13

✓ नक (ओके विक्राय.)
मुख्यालय पुलिस महानिदेशक,
उ0 प्र0, लखनऊ
21/11/13

facts are given, the result would be injustice. It appears that the respondent State is behaving like persecutors and not prosecutors.

13. The Hon'ble Supreme Court of India has taken into account the duties of a public prosecutor in (1999) 4 SCC 602 : Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others. The following has been said in relevant portion of para 23 of the judgment :-

“A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation.”

14. In (1997) 7 SCC 467 : Shiv Kumar Vs. Hukam Chand & another, in relevant portion of paras 13, 15 and 16, the following has been held :-

“13.....A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted....

“15. An early decision of a Full Bench of the Allahabad High Court in Queen-Express v. Durga (ILR (1894-96) 16 All 84 :1894 Awn7 has pinpointed the role of a Public Prosecutor as follows : “It is the duty of Public Prosecutor to conduct the case for the Crown fairly. His object should be, not to obtain an unrighteous conviction, but, as representing the Crown, to see that justice is vindicated ; and, in exercising his discretion as to the witnesses whom he should or should not call, he should bear that in mind. In our opinion, a Public Prosecutor

should not refuse to call or put into the witness box for cross-examination a truthful returned in the calendar as a witness for the Crown, merely because the evidence of such witness might in some respects be favourable to the defence. If a Public Prosecutor is of opinion that a witness is a false witness or is likely to give false testimony if put into the witness box, he is not bound, in our opinion, to call that witness or to tender him for cross-examination."

16. As we are in complete agreement with the observation of a Division Bench of the High Court of Andhra Pradesh in *Medichetty Ramakistiah Vs. State of A.P* : 2 AIR 1959 : 1959 Cri L.J. 1404, we deem it fit to extract the said observation : "A prosecution, to use a familiar phrase, ought not to be a persecution. The principle that the Public Prosecutor should be scrupulously fair to the accused and present his case with detachment and without evincing any anxiety to secure a conviction, is based upon high policy and as such courts should be astute to suffer no inroad upon its integrity. Otherwise there will be no guarantee that the trial will be as fair to the accused as a criminal trial ought to be. The State and the Public Prosecutor acting for it are only supposed to be putting all the facts of the case before the Court to obtain its decision thereon and not to obtain a conviction by any means fair or foul. Therefore, it is right and proper that courts should be zealous to see that the prosecution of an offender is not handed over completely

to a professional gentleman instructed by a private party.”

15. In context of the law as laid down by the Hon'ble Supreme Court of India, it transpires that prima facie, the respondent State has indulged in persecuting. In the opinion of the Court, ideal practice would be for the Public Prosecutor to draft a document, on the basis of material available on record, and file it in the Court.

16. Considering both the aspects of the case, it is directed that an enquiry in the case would be held by a responsible officer to be appointed by the Secretary (Home), Government of U.P.

17. After enquiry, if the official through whom the affidavit has been filed is found to have given incorrect facts, appropriate departmental action be taken.

3— उक्त के सन्दर्भ में मुझे यह कहने का निदेश हुआ है कि कृपया बेल नं०-465/2012 राकेश कुमार सिंह बनाम बनाम उ०प्र० राज्य व अन्य में मा० उच्च न्यायालय, इलाहाबाद खण्डपीठ लखनऊ द्वारा पारित उक्त आदेश दिनांक-11.05.2012 का कड़ाई से अनुपालन सुनिश्चित कराने तथा इस संबंध में कृत कार्यवाही से शासन को तत्काल अवगत कराने का कष्ट करें।

संलग्नक-यथोपरि।

भवदीय,
(कमल सक्सेना)
सचिव।

संख्या एवं दिनांक उपरोक्तानुसार—

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित—

(1)– प्रमुख सचिव, न्याय एवं विधि परामर्शी विभाग, उ०प्र० शासन।

(2)– पुलिस महानिदेशक, उ०प्र० लखनऊ को इस आशय से प्रेषित कि कृपया मा० उच्च न्यायालय, इलाहाबाद खण्डपीठ लखनऊ द्वारा पारित उक्त आदेश दिनांक—11.05.2012 के अनुपालन के संबंध में समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक, उ०प्र० को अपने स्तर से निर्देशित करने का कष्ट करें।

(3)– शासकीय अधिवक्ता, मा० उच्च न्यायालय, इलाहाबाद।

(4)– शासकीय अधिवक्ता मा० उच्च न्यायालय, इलाहाबाद खण्डपीठ लखनऊ।

(5)– विशेष सचिव, गृह (पुलिस) अनुभाग—4 को गृह (पुलिस) अनुभाग—9 के पत्र संख्या—एच०सी०—44(1)/छः—पु०—9—13—31(35)/2013, दिनांक—14.05.2013 के सन्दर्भ में।

(6)– गृह विभाग की बेबसाइस पर।

संलग्नक—यथोपरि।

आज्ञा से,



(एस०के०रघुवंशी)

विशेष सचिव।

Court No. - 26

Case :- BAIL No. - 465 of 2012

Petitioner :- Rakesh Kumar Singh

Respondent :- State Of U.P.

Petitioner Counsel :- R.U. Pandey, J.P. Singh

Respondent Counsel :- Govt. Advocate

Hon'ble Ajai Lamba, J.

1. Applicant Rakesh Kumar Singh prays for bail in Case Crime No. 510 of 2011 under Sections 420/406/120B I.P.C., Police Station Naka Hindola, District Lucknow.
2. Learned counsel appearing for the applicant contends that the applicant is in custody since 01.10.2011. Allegation against the applicant is that the applicant introduced the alleged victims to the main accused Ajay Kumar Singh for getting them employed on payment. In this regard reference has been made to the statement of Sri Om Prakash Jaiswal recorded under Section 161 Cr.P.C. that has been placed on record as SA-2 alongwith supplementary affidavit dated 14.2.2012.
3. Learned counsel appearing for the respondent State Shri Shiv Prakash Tiwari, Additional Government Advocate has vehemently opposed the application for bail on the strength of the pleadings in para 6 of the counter affidavit on the ground that the applicant is the main accused and received money on the pretext that he would get employment to the complainant. Shri S.P.Tiwari, learned A.G.A. further states that applicant is not entitled to concession of bail on account of his antecedents. The applicant is involved in nine other cases of criminal nature. In view of the criminal history of the applicant, the application be dismissed.
4. Learned counsel appearing for the applicant states that a false case is being projected before this Court which adversely affects the administration of justice. It has been pointed out that stand of the respondent State is beyond the material collected during investigation. A reference has been made to the statement of Shri Om Prakash Jaiswal recorded under Section 161 Cr.P.C. (Annexure SA-2) wherein it has not been recorded that the applicant is the main accused or that the applicant received money for getting employment to the victim. From recital in the statement of Shri Om Prakash Jaiswal, it has been pointed out that the main accused would be Ajay Kumar Singh who took money, and not the applicant as projected by the State.
5. Learned counsel has further pointed out that a query was raised in regard to criminal history of the applicant in response to the counter affidavit that alleges criminal history of nine cases indicating involvement of the applicant. Reference has been made to Annexure SA-1 appended with second supplementary affidavit filed on behalf of the applicant dated 2.5.2012 wherein factual position has been made clear.

Facts emanating from Annexure SA-1 indicate that the applicant is not an accused in four of the nine cases shown in the criminal history of the applicant in the counter affidavit filed by the State. It has also been pointed out that Annexure SA-1 is sourced from the official authorities and therefore depicts the correct factual position.

6. In the face of documents Annexure SA-2 and document SA-1 as referred to above, learned counsel appearing for the respondent State has not been able to controvert the stand of learned counsel for the applicant. Shri Tiwari, learned A.G.A. states that the facts as pleaded before this Court are on the basis of the pleadings in the counter affidavit.

7. I have considered the contention of the learned counsel for the parties and have gone through the record.

8. Considering the statement of the alleged victim Shri Om Prakash Jaiswal recorded under Section 161 Cr.P.C. (Annexure SA-2) in which allegation is only of introducing the victim to the main accused and considering the custody period of the applicant since 1.10.2011, the application for bail of applicant Rakesh Kumar Singh is allowed.

9. Bail to the satisfaction of the court concerned.

10. Before parting with the order, this Court has to record that on the basis of the pleadings, a false stand has been projected by the investigating agency before this Court. Pleadings in the counter affidavit filed through Indra Pal Singh, Sub Inspector, Police Station Naka, Lucknow appear to be against the record. While the witness in his statement Annexure SA-2 has given a different picture, the facts projected before this Court by the investigating agency have been found to be entirely different.

11. Also the criminal history as projected by the respondent State in the counter affidavit, has been found to be not based on record and correct facts.

12. The case on behalf of the investigating agency has been reflected through an affidavit sworn by a police official/public servant who is required to project correct facts before this Court. Affidavit filed by a Public Servant holding responsible position is accepted as evidence by a court of law. The narration in an affidavit filed in criminal proceedings needs to be based on facts drawn from record. While adjudicating, the facts given to the Court are to be considered. If false or misleading/non-existent facts are given, the result would be injustice. It appears that the respondent State is behaving like persecutors and not prosecutors.

13. The Hon'ble Supreme Court of India has taken into account the duties of a public prosecutor in (1999) 4 SCC 602 : *Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others*. The following has been said in relevant portion of para 23 of the judgment :-

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14. In (1997) 7 SCC 467 : *Shiv Kumar Vs. Hukam Chand & another*, in relevant portion of paras 13, 15 and 16, the following has been held :-

"13.....A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted...."

"15. An early decision of a Full Bench of the Allahabad High Court in Queen-Express v. Durga (ILR (1894-96) 16 All 84 :1894 AWN7 has pinpointed the role of a Public Prosecutor as follows :

"It is the duty of Public Prosecutor to conduct the case for the Crown fairly. His object should be, not to obtain an unrighteous conviction, but, as representing the Crown, to see that justice is vindicated ; and, in exercising his discretion as to the witnesses whom he should or should not call, he should bear that in mind. In our opinion, a

Public Prosecutor should not refuse to call or put into the witness box for cross-examination a truthful returned in the calendar as a witness for the Crown, merely because the evidence of such witness might in some respects be favourable to the defence. If a Public Prosecutor is of opinion that a witness is a false witness or is likely to give false testimony if put into the witness box, he is not bound, in our opinion, to call that witness or to tender him for cross-examination."

16. As we are in complete agreement with the observation of a Division Bench of the High Court of Andhra Pradesh in *Medichetty Ramakistiah Vs. State of A.P.* : 2 AIR 1959 : 1959 Cri L.J. 1404, we deem it fit to extract the said observation :

"A prosecution, to use a familiar phrase, ought not to be a persecution. The principle that the Public Prosecutor should be scrupulously fair to the accused and present his case with detachment and without evincing any anxiety to secure a conviction, is based upon high policy and as such courts should be astute to suffer no inroad upon its integrity. Otherwise there will be no guarantee that the trial will be as fair to the accused as a criminal trial ought to be. The State and the Public Prosecutor acting for it are only supposed to be putting all the facts of the case before the Court to obtain its decision thereon and not to obtain a conviction by any means fair or foul. Therefore, it is right and proper that courts should be zealous to see that the prosecution of an offender is not handed over completely to a professional gentleman instructed by a private party."

15. In context of the law as laid down by the Hon'ble Supreme Court of India, it transpires that *prima facie*, the respondent State has indulged in persecuting. In the opinion of the Court, ideal practice would be for the Public Prosecutor to draft a document, on the basis of material available on record, and file it in the Court.

16. Considering both the aspects of the case, it is directed that an enquiry in the case would be held by a responsible officer to be appointed by the Secretary (Home), Government of U.P.

17. After enquiry, if the official through whom the affidavit has been filed is found to have given incorrect facts, appropriate departmental action be taken.

18. Enquiry, as directed above, be initiated within a period of ten days from the receipt of certified copy of this order and compliance report would be placed before this court within two months from the date of receiving certified copy of this order.

Letter.

A

19. The order be conveyed to the Secretary (Home) by Sri Shiv Prakash Tewari, Additional Government Advocate, personally.

20. In future, it would be desirable that the officers working in the office of Government Advocate should personally verify the facts before the averments are made and placed before this court for consideration.

Order Date :- 11.5.2012

A.Nigam