फैक्स/सर्वोच्च प्राथमिकता

डीजी परिपत्र संख्या- 04 /2015

**अरूण कुमार गुप्ता**
आई0पी0एस0

**पुलिस महानिदेशक,**
**उत्तर प्रदेश**
1 तिलक मार्ग, लखनऊ।

दिनांकः लखनऊः जनवरी 14,2015

विषय- मा0 सर्वोच्च न्यायालय द्वारा बलात्कार एवं सामूहिक बलात्कार जैसे गंभीर मामलों में त्वरित कार्यवाही हेतु विशेष अनुज्ञा याचिका (क्रिमिनल) संख्या-5073/2011 स्टेट ऑफ कर्नाटका बाई नौनाबिन्केरे पुलिस बनाम शिवान्ना उर्फ तरकारी बिसन्ना में दिनांक 25.04.2014 को पारित निर्णय में मा0 न्यायालय द्वारा दिये गये निर्देशों/आदेशों का अनुपालन सुनिश्चित कराये जाने के सम्बन्ध में।

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प्रिय,

उपरोक्त सम्बन्ध में इस मुख्यालय से परिपत्र संख्या-02/2015 दिनांक 10.01.2015 के द्वारा पूर्व में दिशा-निर्देश निर्गत किये गये हैं, के क्रम में बलात्कार एवं सामूहिक बलात्कार के जघन्य अपराधों में त्वरित कार्यवाही एवं प्रकरण के शीघ्र निस्तारण हेतु मा0 सर्वोच्य न्यायालय द्वारा दिनांक 25.04.2014 को पारित आदेश की प्रति संलग्न है, में संविधान के अनुच्छेद 142 के अधीन शक्तियों का प्रयोग करते हुए परमादेश के रूप में सम्पूर्ण देश के सभी थानों के अनुपालनार्थ निम्नांकित पॉच बिन्दुओं पर निर्देश निर्गत किये जाने के निर्देश दिये गये है। उक्त निर्देशों के सुसंगत अंश निम्नवत् हैः-

i. बलात्कार की घटना के सम्बन्ध में सूचना प्राप्त होते ही विवेचक त्वरित कार्यवाही करेगा तथा पीड़िता को किसी महानगरीय/यथासम्भव न्यायिक मजिस्ट्रेट के पास ले जाकर उसका अभिकथन धारा 164 द0प्र0सं0 के अन्तर्गत लेखबद्ध करायेगा। अभिकथन की एक प्रति विवेचक को विशेष निर्देश के साथ तत्काल प्रदान की जायेगी कि विवेचक धारा 164 द0प्र0सं0 के अन्तर्गत लेखबद्ध कथन के किसी भी अंश को किसी भी व्यक्ति को आरोप पत्र/आख्या अन्तर्गत धारा 173 दाखिल किये जाने तक, प्रकट नहीं करेगा।

ii. विवेचक यथासम्भव पीड़िता को निकटतम महिला महानगरीय/महिला न्यायिक मजिस्ट्रेट के समक्ष प्रस्तुत करेगा।

iii. विवेचक को जब बलात्कार के अपराध घटित होने के सम्बन्ध में जानकारी प्राप्त होती है तो वह घटना का दिनांक तथा समय लेखबद्ध करेगा तथा यह भी अंकित करेगा कि उसने पीड़िता को महानगरीय/यथासम्भव महिला न्यायिक मजिस्ट्रेट के समक्ष किस दिनांक व समय पर प्रस्तुत किया।

iv. यदि पीड़िता को महानगरीय/न्यायिक मजिस्ट्रेट के समक्ष प्रस्तुत किये जाने में 24 घण्टे से अधिक, विवेचक द्वारा विलम्ब किया जाता है तो विवेचक द्वारा इस बात का कारण केस डायरी में लेखबद्ध किया जायेगा तथा इसकी एक प्रति मजिस्ट्रेट को प्रदान की जायेगी।

<u>पीड़िता का चिकित्सकीय परीक्षण</u>

v. अधिनियम संख्या 25 द0प्र0सं0 संशोधन अधिनियम, 2005 के अन्तर्गत धारा 164ए सम्मिलित की गयी है। यह धारा विवेचक पर बाध्यकारी है कि वह बलात्कार की शिकार पीड़िता का अविलम्ब चिकित्सीय परीक्षण कराये तथा चिकित्सीय परीक्षण की एक प्रति धारा 164 के अन्तर्गत अभिकथन लेखबद्ध करने वाले मजिस्ट्रेट को अविलम्ब प्रदान करे।

उपरोक्त सम्बन्ध में आपसे अपेक्षा की जाती है कि इन आदेशों की एक प्रति प्रत्येक थानाध्यक्ष को प्रेषित करते हुए उन्हे निर्देशित करें कि बलात्कार/सामूहिक बलात्कार के जघन्य मामलों में उपरोक्त प्रक्रिया अपनायी जायेगी, जिसका अनुपालन कड़ाई से किया जायेगा तथा वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक यह सुनिश्चित करेंगें कि जनपद के समस्त विवेचना अधिकारियों को परिपत्र एवं सर्वोच्च न्यायालय द्वारा पारित आदेश की प्रति उपलब्ध करा दी गयी है, जिसका प्रमाण पत्र पुलिस उपमहानिरीक्षक के माध्यम से एक सप्ताह के अन्दर इस मुख्यालय को उपलब्ध कराना सुनिश्चित करें।

मै अपेक्षा करता हूँ कि आप बलात्कार/सामूहिक बलात्कार के प्रकरणों में संवेदनशील होकर उपरोक्त निर्देशों का कड़ाई से अनुपालन सुनिश्चित करायेंगें। मा0 सर्वोच्च न्यायालय के आदेशों/निर्देशों का अनुपालन कड़ाई से किया जाय। इसमें किसी भी प्रकार की शिथिलता न बरती जाय।

संलग्नकःयथोपरि

भवदीय

(अरूण कुमार गुप्ता)

समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,(नाम से)
प्रभारी जनपद
उत्तर प्रदेश।

प्रतिलिपि-निम्न को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः-

1. पुलिस महानिदेशक, अभियोजन, उ0प्र0 लखनऊ।
2. अपर पुलिस महानिदेशक, रेलवेज, उ0प्र0 लखनऊ।
3. अपर पुलिस महानिदेशक, सी0बी0सी0आई0डी0, उ0प्र0 लखनऊ।
4. समस्त जोनल पुलिस महानिरीक्षक, उ0प्र0।
5. समस्त परिक्षेत्रीय पुलिस उपमहानिरीक्षक, उ0प्र0।

**REPORTABLE**

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICITON

SPECIAL LEAVE PETITION (CRL.) NO. 5073/2011

State of Karnataka by Nonavinakere Police ..Petitioner

Versus

Shivanna @ Tarkari Shivanna ..Respondent

**O R D E R**

1. Vide order dated 30.08.2013, we had proposed to consider this matter on merit after service of notice to the accused-respondent as we felt acutely concerned as to why the Union of India should not take initiative and steps to evolve a procedure for fast track justice to be adopted by the Investigating Agencies and the Fast Tract Courts by proposing amendments into the Cr.P.C. for speedy justice to the victim.

2. We had noted that the Fast Tract Courts no doubt are being constituted for expeditious disposal of cases involving the charge of rape at the trial stage, but we are perturbed and anguished to notice that although there are Fast Tract Courts for disposal of such cases, we do not yet have a fast track procedure for dealing with cases of rape and gang rape lodged under Section 376 IPC with the result that such heinous offences are repeated incessantly.

3. We had further observed that there is a pressing need to introduce drastic amendments into the Cr.P.C. in the nature of fast tract procedure for Fast Track Courts when we considered just and appropriate to issue notice and called upon the Union of India to file its response as to why it should not take initiative and sincere steps for introducing necessary amendment into the Cr.P.C., 1973 involving trial for the charge of 'Rape' by directing that all the witnesses who are examined in relation to the offence and incident of rape cases should be straightway produced preferably before the Lady Judicial Magistrate for recording their statement to be kept in sealed cover and thereafter the

same be treated as evidence at the stage of trial by producing the same in record in accordance with law which may be put to test by subjecting it to cross-examination. We were and are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the Police under Section 161 Cr.P.C. to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross-examination. We are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the police under Section 161 Cr.P.C. which is any case is inadmissible except for contradiction so that the statement of the accused thereafter be recorded under Section 313 Cr.P.C. The accused then can be committed to the appropriate Court for trial whereby the trial court can straightway

allow cross examination of the witnesses whose evidence were recorded earlier before the Judicial Magistrate.

4. What we wished to emphasize is that the recording of evidence of the victim and other witnesses multiple times ought to be put to an end which is the primary reason for delay of the trial. We are of the view that if the evidence is recorded for the first time itself before the Judicial Magistrate under Section 164 Cr. P.C. and the same be kept in sealed cover to be produced and treated as deposition of the witnesses and hence admissible at the stage of trial with liberty to the defence to cross-examine them with further liberty to the accused to lead his defence witness and other evidence with a right to cross-examination by the prosecution, it can surely cut short and curtail the protracted trial if it is introduced at least for trial of rape cases which is bound to reduce the duration of trail and thus offer a speedy remedy by way of a fast track procedure to the Fast Track Court to resort to.

5. Considering the consistent recurrence of the heinous crime of rape and gang rape all over the country

including the metropolitan cities, we are of the view that it is high time such measures of reform in the Cr. P.C. be introduced after deliberation and debate by the legal fraternity as also all concerned.

6. We had therefore issued notice to the Union of India as also the Law Commission of India and all the State Law Commissions and the Law Secretaries of the States for eliciting their views on the subject. The Law Commission of India filed its response to the same, and although in principle agree that the proposed changes in the Cr.P.C. are justified, it is of the opinion that the same might prejudice the investigation of the case by the police. Thereafter, we thought appropriate to invite the views of the legal fraternity and hence a general notice was issued to the Members of the Bar to assist the Court considering the importance of the issue raised.

7. We, thereafter appointed the learned senior counsel Mr. Shekhar Naphade and Mr. U.U. Lalit, who appeared and addressed this Court. Learned senior advocate Mr. Shekhar Naphade agreed with the

suggestions given by this Court that the statement of the victim of rape and gang rape may be and should be recorded under Section 164 of the Cr.P.C. which should be placed on record treated as evidence of the victim and may later be relied upon as evidence and then the accused may be given a chance to cross-examine the prosecution version and the evidence recorded at the instance of the victim.

8. Learned senior counsel Mr. Shekhar Naphade was good enough to give us a brief note in this regard. The learned Addl. Solicitor General Mr. Siddharth Luthra also ably assisted us and drew the attention of this Court regarding the implications on the trial in case the statement of victim is recorded under Section 164 Cr.P.C. and is made admissible for the purpose of trial.

9. On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the police station in charge

in the entire country to follow the direction of this Court which are as follows:

(i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.

(ii) The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

(iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

(iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same

in the case diary and hand over a copy of the same to the Magistrate.

(v) Medical Examination of the victim: Section 164 A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C.

10. A copy of this order thus be circulated to all the Director Generals of Police of all the States/Commissioner of Police in Metropolitan cities / Commissioner of Police of Union Territories who are then directed to send a copy of this order to all the police stations in charge in their States/Union Territories for its compliance in cases which are registered on or after the receipt of a copy of these directions. Necessary instructions by the DGPs/ Commissioners of Police be also issued to all the police station incharge by the DGPs/Commissioner of Police incorporating the directions issued by us and recorded hereinbefore.

11. The matter be posted again after four weeks to ensure compliance of this order by the DGS & Commissioners of Police in the country before the appropriate Bench and also for such other further order or orders which may be considered necessary.

.....J.
(Gyan Sudha Misra)

.....J.
(V. Gopala Gowda)

New Delhi,
April 25, 2014