

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 7758 of 2021

Petitioner :- Ambesh Kumar And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Udai Chandani

Counsel for Respondent :- G.A.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Gautam Chowdhary,J.

Heard learned counsel for the petitioner and learned A.G.A.

Personal affidavit of respondent no.1 dated 29.9.2021 and personal affidavit of respondent no.2 dated 30.9.2021 have been filed today which are taken on record.

This writ petition has been filed praying for the following reliefs:-

“(i) Issue a writ, order or direction, in the nature of mandamus directing the respondent no.5 to send the D.N.A. report of the respective articles as forwarded by the Investigating Officer concerned on 11.09.2020 in connection to the criminal case registered by the petitioners at Police Station M.M.M. Gate, Agra, as Case Crime No.49 of 2020 under sections 302, 364, 201, 506 of IPC read with 3(2)5 of the SC/ST Act to the Court of Special Judge SC/ST Act, Agra bearing Session Trial No.200 of 2020 (State Vs. Vivek Tiwari) within a stipulated period.

(ii) Issue a writ, order or direction, in the nature of mandamus directing the respondent no.5 to make necessary compliance of the order dated 18.08.2021 passed by the learned Special Judge SC/ST Act, Agra in Session Trial no.200 of 2020 (State Vs. Vivek Tiwari) within a stipulated period.”

Paragraph nos.5,6,7,8,9 and 10 of the personal affidavit filed by the Additional Chief Secretary (Home), Government of Uttar Pradesh, Lucknow are reproduced below :-

‘5. That the sample of the DNA in question was received in the Forensic Science Laboratory, Agra on 16.09.2020. However, it is humbly submitted that at that time, there was no facility to conduct the necessary forensic examination in the Forensic Science Laboratory, Agra.

6. That the aforesaid sample of the DNA was, thereafter sent to the Forensic Science Laboratory, Mahanagar, Lucknow and the same was received on 17.09.2020. A copy of the case registration and acknowledgment receipt reflecting this fact is being enclosed herewith and marked as **annexure no.1 to this affidavit.**

7. That it is humbly submitted that at present there is a pendency of about 9972 (DNA tests) in the four Forensic Science Laboratories of the State of Uttar Pradesh, out of which pendency of 8927 is at Forensic Science Laboratory Lucknow.

8. That it is further humbly submitted that the process involved in examining the DNA sample according to the forensic science normally takes about a week for the

attending scientist/ technician to arrive at any definite scientific finding after which, he is in a position to form an opinion and to prepare and submit his report.

9. *That while the delay due to the aforesaid unavoidable reasons is deeply regretted, but the DNA report has been received and is being enclosed herewith and marked as **annexure no.2 to this affidavit.***

10. *That the deponent assures this Hon'ble Court that he will try and ensure that every sample is examined and the report submitted as expeditiously as possible."*

Similar averments have been made by the Director General of Police, Uttar Pradesh, Lucknow in paragraph nos.6,7,8,9,10 and 11 of his personal affidavit.

The sample for D.N.A. test received on 17.09.2020 was examined and the report was submitted by forensic science laboratory, Mahanagar, Lucknow on 29.9.2021. Thus, the forensic lab took more than one year to test the sample and to submit report. The sample was taken up out of turn for testing and preparation of report, probably for reason of the order dated 23.9.2021 passed by this Court which is reproduced below :-

"This Writ petition has been filed prayer for the following reliefs:

"i) Issue a writ, order or direction in the nature of mandamus directing the respondent no.5 to send the D.N.A. report of the respective articles as forwarded by the investigating Officer concerned on 11.9.2020 in connection to the criminal case registered by the petitioners at Police Station M.M.M. Gate, Agra, as Case Crime No. 49 of 2020 under sections 302, 364, 201, 506 of IPC read with 3(2)(5) of SC/ST Act to the Court of Special Judge SC/ST Act, Agra bearing Sessions Trial No. 200 of 2020 (State vs. Vivek Tiwari) within a stipulated period.

ii) issue a writ order or direction in the nature of mandamus directing the respondent no.5 to make necessary compliance of the order dated 18.8.2021 passed by the learned Special Judge SC/ST Act, Agra in Session trial No. 200 of 2020 (State vs. Vivek Tiwari) within a stipulated period."

Petitioner no.1 is the father and petitioner no.2 is the brother of the deceased, Dr. Yogita who was pursuing her Post Graduation and was also working in S.N.Hospital, Agra. The first information report No. 49 of 2020 under sections 302, 364, 201, 506 of IPC read with 3(2)(5) of SC/ST Act Police Station, M.M.M.Gate, Agra, was registered on account of death of the aforesaid Dr. Yogita, who was allegedly murdered by the accused Dr. Vivek Tiwari. Her dead body was recovered at Agra.

It has been alleged that some hair were found from the hands of the deceased Dr. Yogita and some hair from inside the car, allegedly used in the murder of Dr. Yogita. It is alleged that those hair were sent for examination to the respondent no.5 under covering letter dated 9.9.2020 issued by the Circle Officer, Kotwali, District Agra. It is submitted that even though the sessions court has passed orders and reminders to submit forensic report and yet the forensic report has not been submitted by the respondent no.5 although one year has passed.

Expeditious, fair and inordinate investigation not only result in a fair trial but is also necessary of justice. Learned A.G.A. states that the trial has commenced. However, it is not denied that the forensic report may prove to be an important piece of evidence for the purpose of the trial. Expeditious and fair trial in the case in hand needs earliest submission of the forensic report before the concerned sessions court.

In view of the aforesaid, the respondent nos. 1, 2 and 5 are directed to file their counter affidavits by means of their personal affidavits in which they shall show cause for inordinate delay in submission of the forensic report.

Put up as a fresh case on 1.10.2021 for further hearing.”

From perusal of the paragraph-7 of the afore-quoted personal affidavit of the respondent no.1 it appears that total 9972 DNA test samples are pending in four forensic science laboratories in the State of Uttar Pradesh and the pendency at forensic science laboratory, Lucknow is 8927. Forensic test reports in criminal cases may prove to be an important piece of evidence for fair and speedy trial. It may also prove to be very helpful in effective and fair investigation. If the state of affairs are such that the samples are tested after one or two years, then it may not only delay investigation and fair trial but may also adversely affect the investigation and the trial. Several persons are approaching this Court for testing of samples and submission of forensic report which were collected one or two years ago. Such state of affairs, looking into the seriousness of investigation and fair trial in criminal cases; cannot be allowed to continue. Therefore, we direct the respondent no.1 to file his personal affidavit with specific answers to the following questions :-

- (i) Whether the State Government wants fair and speedy investigation of criminal cases and fair and speedy conclusion of trials ?
- (ii) Whether forensic report of samples collected, shall be helpful in investigation and speedy conclusion of trial ?
- (iii) Whether non-submission of forensic report within a time bound period may delay conclusion of the investigation of fair trial ?
- (iv) Whether the State Government would like to establish forensic lab at all Commissioner's headquarters in the State of Uttar Pradesh so as to facilitate fair, proper and speedy investigation and fair and speedy trial ?

Put up as fresh case for further hearing on 27.10.2021.

Order Date :- 8.10.2021

shiv