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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 330/2022

UNITED SIKHS

..... Petitioner

Through: Mr.Satinder Singh Gulati and
Mr.Kamaldeep Gulati, Advocates.

versus

COMMISSIONER OF POLICE, DELHI POLICE & ORS.

..... Respondents

Through: Ms.Rupali Bandhopadhyay, ASC for
State with Inspector Parvesh Kasana,
P.S.: Vivek Vihar, Delhi.
Mr. B. Badrinath, (DSLSA) Advocate
for the complainant.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **21.07.2022**

1. Writ petition has been preferred on behalf of the petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C. wherein following prayers have been made by the petitioner:

“A. issue a writ, order or direction in the nature of mandamus directing the respondents jointly and/or severally to allow the petitioner through its two representatives to meet and interact with victim ‘P’ (identity withheld) (in FIR No.126 dated 26.01.2022, P.S. Vivek Vihar, Delhi) and her family for the purposes of providing them legal aid, assistance and representation for proper investigation and before the courts of law, as per their choice to get due justice; and/or

B. issue a writ, order or direction in the nature of mandamus, by

issuing general directions to respondents to allow NGOs like petitioner to meet and interact with victims and their families in offences against the women, religious minorities and under privileged people for the purposes of providing legal aid, assistance for proper police investigation and representation before the courts of law to get due justice.”

2. In brief, as per the case of the petitioner, “United Sikhs” is a NGO (a UN Affiliated Organization), registered as society under the Societies Registration Act, 1860 and has been working internationally to achieve its main aim, objective to empower those in need, especially disadvantaged and minority communities around the world and its slogan ‘Recognize the Human Race as One’. It is further claimed that the petitioner is providing legal aid to under-privileged people, including minority communities and provides them with legal guidance, assistance and fights legal cases for them.

3. It is further the case of the petitioner that a gory occurrence took place on 26.01.2022 against a Sikh woman, namely ‘P’ (identity withheld) who was allegedly gang-raped, paraded in local area wearing garland of footwear and beaten by male and female family members of accused. It is claimed that a woman belonging to a religious minority was victimized, outraging the religious feelings of Sikhs. It is also submitted that a FIR No.126/2022, under Sections 365/376D/364/354/109/323/342/356/506/ 509/120B/34 I.P.C. was registered at Police Station: Vivek Vihar, Delhi.

The grievance of the petitioner is that representatives of petitioner were not allowed to meet and interact with the victim of crime, who is a Sikh women namely ‘P’ and whole area near parental place of victim was cordoned off.

It is submitted that by denying the interaction of the representatives of

the petitioner/organization, the victim's rights to hire and engage a lawyer of her own choice and to be provided legal aid, assistance and guidance for prosecution of crime were denied.

A representation on behalf of the petitioner is also stated to have been issued to National Human Rights Commission as well as a legal notice was issued to Delhi Police on 05.02.2022.

4. Learned ASC for the State informed the court on 14.02.2022 that the State is taking due care of the victim and she has been properly counseled. Further, an amicus curiae had been appointed by the Court, who sought time to file status report.

5. Today learned ASC for the State and Mr.B. Badrinath, Advocate from DSLSA appear and submit that status report has been filed on record on behalf of DSLSA and a copy of the same has been supplied to learned counsel for the petitioner.

The action taken by DSLSA as referred in Para Nos.3 to 5 of the Status Report is relevant and may be reproduced for reference:-

“3. That it is most humbly submitted that DSLSA has already provided a Legal Aid Counsel Shri Bhairav Dass (from MM panel) to the Victim 'Ms. P', vide appointment of Legal Aid Ref No. 150/2022 (DLSA, Shahdara). The Ld. Secretary, DLSA (Shahdara) on instructions from the undersigned has personally interacted with the victim 'Ms. P' over telephone on 19.07.2022 and enquired about her satisfaction with the Legal Aid Services being provided to her. As per the report of the Ld. Secretary, DLSA (Shahdara), victim during the course of telephonic interaction stated that she was satisfied with the LAC provided to her by DLSA, Shahdara and that he was diligently pursuing the matter. The victim expressed no wish to get her LAC replaced. The victim was apprised about the option of getting the LAC

replaced in case she deems it appropriate. The victim was also asked to approach DLSA, Shahdara for any other legal assistance. The report of the Secretary, DLSA (Shahdara) received is annexed herewith as Annexure- 'A'. It is also pertinent to mention here that even the Rape Crisis Cell of Delhi Commission of Women is providing legal and other forms of assistance to the victim.

4. That it is most humbly submitted that DSLSA had directed disbursement of interim compensation to the tune of Rs. 2,50,000/- to the Victim 'Ms.P', on 21.02.2022 soon after it received the copy of Award passed by the District Victim Compensation Committee, DLSA (Shahdara) dated 10.02.2022. The said amount was disbursed by the bank on the same day. Copies of the Compensation Award and Disbursement Order and Disbursement Slip are annexed herewith as Annexures- 'B' 'C' and 'D'.

5. That this report is being submitted for the kind perusal of this Hon'ble Court and for further necessary directions in the matter. This Authority is willing to abide by any other direction that flows from this Hon'ble Court."

6. Further, learned ASC for the State submits that there is no reservation on the part of the State for meeting of any individual or organization with the victim in accordance with law. The victim is stated to have been already provided with necessary legal aid services.

It is also submitted on instructions from Inspector Parvesh Kasana that the case is being prosecuted in accordance with law, wherein the chargesheet has already been filed in the concerned Court on 25.04.2022 and the next date of hearing is fixed for 26.07.2022 for committal proceedings.

7. I have given considered thought to the contentions raised.

The petitioner seeks to raise important issues regarding rights of the victim for legal aid, assistance and representation for proper investigation before the courts of law as per their choice as well as seeks to confer rights on the organizations of the nature of the petitioner to meaningfully intervene and assist for aforesaid purpose.

8. At the outset, it may be noticed that internationally, the UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power 1985 was adopted vide the United Nation's General Assembly Resolution 40/34 and is the initiating point for pro victim movement globally. The rights of victims to be heard and to participate in criminal proceedings have since long been evolving and meaningful amendments have been carried domestically. The 154th Report of the Law Commission of India also made radical recommendations for compensatory justice to a victim. Recommendations were also made by the Committee on Reforms of Criminal Justice System in its Report in 2003. As such, the victims' right to participate in criminal trial and to know the status of investigation, to take necessary steps and be heard at crucial stage of criminal proceedings has gradually been recognized. Crucial amendments have also been brought into force by the Parliament, by Code of Criminal Procedure (Amendment) Act, 2008 by inserting the definition of victim under Section 2(w)(a) and recognizing various rights of victims at different stages of trial.

The courts have also been proactive in balancing and ensuring that the rights of victims are duly addressed from the participatory stage of the investigation till the culmination of proceedings in an appeal or revision. The said rights are another facet of 'human rights' implicit in the guarantee of Article 21 of the Constitution of India.

Wherein a victim is unable to engage a lawyer, secure legal services on account of indigence or poverty or incommunicado situation, the State under

such situation is mandated to provide appropriate legal aid even to the victims, if the circumstances so warrant and ensure justice. Free legal service is an unalienable element of reasonable, fair and just procedure both from the perspective of the victim as well as accused, for without it a person suffering from economic or other disability would be deprived of the opportunity for securing justice. Proviso to Section 24(6) of Cr.P.C. explicitly lays down that the court may permit the victim to engage an advocate of his choice to assist the prosecution under this Section. As such, apart from the assistance of advocate from DSLSA, the court can always permit the victim to engage an advocate of his choice to ensure fair trial and justice. The State as the custodian of power of the Rule of Law owes a duty to ensure that legal aid if required by the victim is duly provided for enforcement of her legal rights, since the State in pursuing or conducting a criminal case, does not espouse any right of its own but vindicates the cause of society at large.

9. The reply filed by DSLSA clearly reflects that due legal assistance stands provided to the victim to ensure safeguarding of her rights. Further, the disbursal of interim compensation of Rs.2.5 lacs to the victim has also been ensured. As such, concerns expressed on behalf of the petitioner, regarding provision of legal aid to victim stand addressed. However, it may be observed that reflection of the crime by the petitioner as a targeted crime against a member of minority community cannot be appreciated.

10. The next grievance of the petitioner in the present case is that the victim has been illegally denied a fair and effective assistance by refusing permission to representatives of the petitioner to meet the victim. In response to the same, it is clarified and submitted by learned ASC that State has no reservation for meeting of any individual or organization with the victim in accordance with law.

Since, at present, there is no restriction or bar in meeting of any individual or organization with the victim for rendering any assistance as per

stand of the respondents, the petitioner through representatives is at liberty to meet or interact with victim 'P' in accordance with law. Respondents, in view of submissions made by learned ASC, shall ensure to facilitate any such meeting if any intimation is given in this regard by the representatives of the petitioner, to obviate any concerns. However, it may be observed that any political colour shall not be given to the incident, nor any religious reflection added out of context, to avoid distortion of criminal justice system. It may be reiterated that a meeting generally cannot be denied for providing necessary legal aid and assistance, if so required by the victim, to ensure delivery of justice and fair trial but the caution remains that such meetings are not used inappropriately for creating any "law and order" situation or arousing the emotions of a particular community in an adverse manner, thereby disturbing the public tranquillity or likely to cause breach of peace.

11. I am further of the considered opinion that it may not be appropriate to pass general directions to the respondents allowing for NGOs like petitioner to meet and interact with victims, as prayed by the petitioner, since it has already been submitted on record by learned ASC for the State that there is no such restraint or restriction for meeting the victim, in the present case. Further, the aforesaid question is left open to be suitably considered in appropriate proceedings.

Writ Petition is accordingly disposed of.

A copy of this order be forwarded to the Commissioner of Police, learned Trial Court and DSLSA for ensuring time bound disposal of FIR No.126/2022, PS: Vivek Vihar, Delhi with requisite legal assistance to the victim, in accordance with law.

ANOOP KUMAR MENDIRATTA, J.

JULY 21, 2022/R