

HIGH COURT OF DELHI

CORAM: Hon'ble Mr. Justice Amit Bansal

Date on: 22nd December 2023

CRL.M.C. 6288/2023 & CRL.M.A. 23536/2023 (stay)

**STATE (NCT OF DELHI) THROUGH DEPUTY COMMISSIONER OF
POLICE, CRIME-III, DELHI ... PETITIONER**

VERSUS

SHADAB ... RESPONDENT

Legislation:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) Sections 21/25.
- Indian Penal Code, 1860 (IPC) Section 201.

Subject:

Challenge against orders requiring the personal appearance of a Deputy Commissioner of Police (DCP) and issuance of bailable warrants in a narcotics case for alleged delay in filing a forensic report.

Headnotes:

Petition Challenging Lower Court Orders - Quashing sought for orders dated 31st July 2023 and 2nd August 2023 by Special Judge (NDPS), requiring DCP's appearance and issuing bailable warrants against him for alleged delay in FSL report in narcotics case. [Paras 1, 4, 17, 20]

FSL Report Delay - Accused in FIR No. 26/2023 under NDPS and IPC sent to judicial custody; FSL report pending. Charge-sheet filed without FSL report, leading to lower court's order calling for DCP's appearance. [Para 2, 3]

Judicial Restraint and Police Officials - Reference to precedents emphasizing judicial restraint in censuring police officials and expunging adverse remarks in similar contexts. [Paras 9, 19]

Role of FSL Independent of Police - FSL's role as an independent body highlighted; delay in FSL reports not attributable to police negligence. [Paras 11, 16]

Unwarranted Judicial Directions - Lower court's direction for DCP's personal appearance and issuingailable warrants deemed unjustified and set aside. [Paras 20, 22]

Impact on Judicial Discipline - Observations on breach of judicial discipline and recommendation for inspection committee review of the judge's conduct. [Para 23]

Referred Cases:

- Sanjay Kumar Sain v. State of NCT of Delhi, 2023 SCC Online Del 1260.
- Ajit Kumar v. State (NCT of Delhi), 2022 SCC OnLine Del 3945.

Representing Advocates:

- Petitioner: Mr. Sanjeev Bhandari, ASC for State, with Mr. Kunal Mittal, Mr. Arjit Sharma, Mr. Shushant Bali, Ms. Anvita Bhandari, and Ms. Rishika, Advocates.

- Respondent: None.

JUDGMENT

AMIT BANSAL, J.

1. The present petition has been filed seeking quashing and setting aside of orders dated 31st July, 2023 and 2nd August, 2023, passed by Special Judge, (NDPS) Additional Sessions Judge (ASJ), District North East, Karkardooma Courts, Delhi in a case titled State v. Shadab emanating out of FIR No. 26/2023, to the extent of observations made therein and theailable warrants issued against the petitioner Deputy Commissioner of Police (DCP) (Crime) vide order dated 2nd August, 2023.
2. The facts and circumstances, leading to the filing of the present petition, are that an FIR No. 26/2023 under Sections 21/25 Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) and Section 201 of the Indian Penal Code, 1860 (IPC) was registered at Police Station Crime Branch. On 7th February, 2023, the accused persons were sent to judicial custody, which was extended from time to time, and the exhibit samples in the case were

sent to the Forensic Science Laboratory (FSL). Subsequently, the Chargesheet was filed on 31st July, 2023.

3. Vide order dated 31st July, 2023, the Sessions Judge directed the IO, SHO, ACP and DCP (Crime) to appear in court before himself as in the aforementioned case, the Chargesheet was filed without an FSL Report. The relevant portion of the said order is extracted herein below:-

".....IO has submitted that report of FSL is still pending and when this court has asked to this IO whether any D.O. letter was written by the DCP(Crime), he has told that DCP (Crime) had written D.O letter to the FSL on dated 21.06.2023. Since, the accused in the present case was arrested way back on 03.02.2023 and charge-sheet has been filed today at 3:45PM that too without any report of FSL. It is observed that police officials even in the crime branch are not following the standing order of the Commissioner of Delhi Police No. L&O No. 21-22 as the DO letter was written by DCP(Crime) on 21.06.2023.

In view of non-compliance of above said standing order of Commissioner of Delhi Police, the IO, SHO, ACP and DCP (Crime) are called upon for the next date of hearing as it appears to the court that no sincere effects are not being made by these police officials to receive the report of FSL expeditiously. To come on 02.08.2023".

4. On 2nd August, 2023, DCP (Crime) had requested an exemption from personal appearance before the Sessions Court as he was pre-occupied with Signature Not Verified Digitally Signed By:DINESH KUMAR Signing Date:22.12.2023 official duties. However, this request was rejected on the ground that no official exigencies were shown in the request letter. Furthermore, bailable warrants in the sum of Rs. 5000/- were issued against the DCP (Crime). The relevant portion of the said order is extracted herein below:-

.... IO has also brought the request of Sh. Amit Goel, DCP, Crime Branch, wherein it is stated that he is occupied in official duties today, so he may be exempted from his personal appearance, but no official exigencies is shown in this request letter, so this application is dismissed.

B/W in the sum of (Rs. 5,000/- are ordered to be issued against DCP, Crime Branch.

Same are ordered to be executed through the Commissioner of Police....."

5. The directions contained in the impugned orders qua the DCP (Crime) were stayed by the Predecessor Bench vide order dated 31st August, 2023. Liberty was also given to the State to place on record additional documents in the form of similar orders passed by the same Judge in other cases.

6. In the present case, Notice was not issued to the respondent as the respondent is only a proforma party.

7. Learned ASC, appearing on behalf of the petitioner, has made the following submissions :-

i. Impugned orders dated 31st July, 2023 and 2nd August, 2023 were unwarranted and beyond the jurisdiction of the Sessions Court. ii. The issuance of bailable warrants against the petitioner DCP (Crime) vide order dated 2nd August, 2023 was without any basis or authority in law.

iii. FSL is an independent body and prepares reports as per its own rules and regulations. The petitioner, being DCP of a particular zone/district, can only make a request for expeditious preparation of Signature Not Verified Digitally Signed By: DINESH KUMAR Signing Date: 22.12.2023 the FSL report, which was made by the petitioner vide letter dated 19th June, 2023.

iv. The delay in filing of the Chargesheet on account of the delay in preparation of the FSL Report cannot be attributed as negligence on the part of the investigating agencies like the Police, much less the petitioner DCP.

v. Reliance has been placed on the judgment of Coordinate bench in Sanjay Kumar Sain v. State of NCT of Delhi, 2023 SCC Online Del 1260, wherein a Coordinate Bench had expunged adverse remarks made against high-ranking police officials, by the same Sessions Judge, whose orders are impugned in the present petition. vi. Vide additional documents placed on record on 19th September, 2023, a compilation of several orders passed by the same Sessions Judge has been placed on record, whereby ACP and DCP have been summoned in court on multiple occasions, despite passing of the aforementioned judgment in Sanjay Kumar Sain (supra).

8. I have heard the learned ASC and perused the material on record.

9. A Coordinate Bench in Ajit Kumar v. State (NCT of Delhi), 2022 SCC OnLine Del 3945, dealing with a similar situation, had observed that judicial officers should exercise restraint in judicial orders and refrain from passing denigrating remarks against Police officials. Relevant observations from Ajit Kumar (supra) are set out below: -

"37. Every word forming part of a judicial order forms permanent record. Use of denigrating remarks against anyone, especially against police officials impeaching their credibility and questioning their sense of dedication towards duty, is not the best course adopted by a judicial officer, that too when the Signature Not Verified Digitally Signed By: DINESH KUMAR Signing Date: 22.12.2023 same is not required for the adjudication of the case before the Court. Such criticism may have a devastating effect on the professional career of an officer. It is also bound to have everlasting affect on the reputation of a person. This Court is conscious of the fact that police officers are expected to be at

the desired place and desired time with utmost efficiency, both by the general public as well by the Courts. Though the police officers are duty bound to discharge their responsibilities with utmost conviction, the practical difficulties which are faced by them cannot be overlooked and disregarded by the Courts. At the same time, such regard by the courts can not by any stretch of imagination or interpretation be take to be lack of power of the court to pass order regarding the power to point out any irregularity omission or commission of any act as directed by the Court, or any disobedience to obey the directions of the Court. This Court rather vide this order wants to convey that judicial strictures against anyone need to be passed with utmost circumspection. The judicial power comes with utmost responsibility to exercise adjudicatory liberty to express oneself. Judicial strictures against a police officer to the extent as expressed in the present case are problematic though every disapproval expressed by exercise of adjudicatory liberty of expression may not fall in the realm of lack of judicial restraint.

38. The strictures as passed in the present case to the extent of observing that the officer in question has no sense of responsibility and devotion towards duty and further directing the Commissioner of Police to take corrective measures and take action against the police official and further observing that the Commissioner of Police, Delhi may take a call as to whether the petitioner is fit for performing duties as SHO or not goes beyond the mandate of law, judicial precedents and discipline of judicial restraint. This does amount to over stepping adjudicatory liberty of expression exercised by a judge. Such observations have the effect of stigmatizing without conviction, sentencing without inquiry and affect career in future of an officer which had to be left to the internal administrative vigilance and disciplinary proceedings to be conducted by the parent department of the officer in question."

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10. The aforesaid observations of Ajit Kumar (supra) were reiterated by the same Coordinate Bench in Sanjay Kumar Sain v. State of NCT of Delhi, 2023 SCC OnLine Del 1260, wherein the Court dealt with orders similar to the impugned orders in the present petition and passed by the same Judge, again in the context of an NDPS case. In the said case also, the Judge had made observations in his orders that IO/SHO/ACP/DCP are negligent for not making sincere efforts to obtain the FSL report expeditiously. Similarly,ailable warrants were issued for the appearance of DCP before the Court.
11. The Coordinate Bench in Sanjay Kumar Sain (supra), while expunging the aforesaid adverseremarks made against the police officials, noted that FSL is an independent Government agency which is not under the control of Delhi Police. Therefore, it was not within the control of the Police officials to obtain

the report from the FSL in an expeditious manner. The relevant observations from the judgment of the Coordinate Bench are set out below: -

"24. While the learned Trial Court went on to make observations against the petitioner and stated that even the Commissioner of Police, Delhi could not ensure filing of the report at an early date, it was overlooked by the learned Trial Court that the Director, FSL was neither under the control of Commissioner of Police nor the present petitioner or any other police officer. It is difficult to believe that the learned Trial Court had no knowledge of the fact that it was not in the hands of Investigating Officer or present petitioner to have fixed any date for taking the voice samples or to decide the time taken for preparation of the report of the voice samples. FSL, being an independent body, prepares reports according to its own rules and regulations and the petitioner as the DCP of a particular district/zone of Delhi can only write a request letter to the Director, FSL requesting for Signature Not Verified Digitally Signed By:DINESH KUMAR Signing Date:22.12.2023 preparation of report expeditiously. At best, the petitioner and the other police officers against whom remarks have been passed, could have communicated the urgency of the matter and at times displeasure of the court concerned that the preparation of the report was being delayed.

25. The learned Trial Court, therefore, despite being apprised of the fact that request letters and special messengers had been sent to FSL by the petitioner, still considered it as negligence on his behalf that the Director, FSL was not preparing or forwarding the report to the police. The petitioner herein or the police officers could not have prepared or filed the report, and in case that was possible as per law, the negligence could have been attributed to them. The petitioner herein had informed the Director, FSL regarding the orders passed by the learned Trial Court which was the best he could do within the domain of his duties. The learned Trial Court unfortunately overlooked the same. The role of police and investigating agency or law enforcement agency works in a particular parameter and their domain is separated from the FSL which is an independent body.

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27. This is also reflective of the fact that the Court was aware that the petitioner or other police officers had no control over the processes of FSL, Delhi. Despite the same, the IO, SHO, ACP, DCP as well as Commissioner of Police were termed as the persons responsible for the delay in preparation of FSL report and further guilty of the delay in framing of charges in the present case.

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29. Nevertheless, without going into the merits of the case, it is noted that there was no material or occasion before the learned Trial Court to hold the petitioner guilty for the delay in preparation of FSL reports by repeatedly terming him as negligent and insensitive.

45. In view of the aforesaid discussion, the remarks passed against the petitioner herein, as reproduced in para no. 3 and 5 of this judgment are hereby expunged/deleted from the impugned orders dated 13.10.2022 and 24.11.2022, and the Bailable Warrants issued against him vide impugned order dated 07.12.2022, as reproduced in para no. 7 of this judgment are hereby cancelled/set aside.

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47. Learned Registrar General of this Court is directed to forward a copy of this judgment to all the District and Sessions Judges of Delhi who shall ensure the circulation of this judgment among all the Judicial Officers in their Courts for sensitization of Judicial Officers on this issue. A copy be also forwarded to Director (Academics), Delhi Judicial Academy for taking note of its contents."

12. In terms of the aforesaid judgment, a copy of the said judgment was forwarded to all District and Sessions Judges of Delhi to be circulated among all judicial officers in Delhi.

13. In the present case, learned ASC has placed on record several similar orders passed by the same Sessions Judge, after the passing of the aforementioned judgment in Ajit Kumar (supra). 14. Illustratively, I have extracted relevant portions from the said orders herein below-

i. Order dated 8th May, 2023 in State v. Rahees @ Rahis, SC No. 61/2023-

".....Earlier, the Ld. Addl. PP for State had submitted that the police file was not given to him by the 10, so, the DCP, North-East was also called upon for today. Today, this court has also received a letter from the DCP, North-East. Same has been perused.

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Date: 22.12.2023 Since, the copies of the charge-sheet are not complete, so, the DCP, North-East is called upon for the next date of hearing." ii. Order dated 10th May, 2023 in State v. Dhananjay Saini & Ors., SC No. 75/2020-

".....Since, accused Anil Khari has not been produced in JC, despite issuance of the production warrants. So, fresh warrants of production

are ordered to be issued for producing this accused Anil Khari on the next date of hearing.

IO/SHO & ACP who have forwarded the charge-sheet are called upon for the next date of hearing. The DCP, North- East is also called upon for the next date of hearing..." iii. Order dated 16th May, 2023 in State v. Deepankar, SC No. 440/2021-

".....On 27.03.2023, a letter from ACP, North-East was received wherein it is stated that IO/SI Bhupender was deputed to do the needful and DCP, North-East sought an exemption. But deputed IO/SI Bhupender did not do anything and today he has also failed to appear. Deputed IO has submitted that IO/SI Bhupender is on CL till 20.05.2023. Retd. SI Kiran Pal who had earlier conducted the investigation is also present. Since deputed IO/SI Bhupender failed to do anything despite directions of DCP, North-East, so, this time deputed IO/SI Bhupender is called upon through B/W in the sum of Rs. 5,000/-. Same are ordered to be executed through DCP concerned. IO and DCP are also called upon for the next date or hearing." iv. Order dated 1st June, 2023 in State v. Chhote, SC No. 293/2022-

".....Since, the IO has failed to file FSL report for considerable period, so, the request of the IO for seeking exemption is turned down, as, accused is behind bars for a considerable period.

Signature Not Verified Digitally Signed By:DINESH KUMAR Signing Date:22.12.2023 Warrants of arrest are ordered to be issued against this IO/Insp. Binod Kumar for the date fixed i.e. 05.06.2023. Same are ordered to be executed through the DCP, North- East. The DCP, North-East is also called upon."

v. Order dated 12th July, 2023 in State v. Nawab, SC No. 454/2022-

".....Since, IO failed to appear despite service of notice, so, warrants of arrest are ordered to be issued against the IO/Insp. Kuldeep Singh for the next date of hearing. Same are ordered to be executed through the DCP concerned. SHO, ACP (who has forwarded the chargesheet) and the DCP, North-East are also called upon for the next date of hearing. Accordingly, matter stands adjourned for consideration on charge..."

15. It's unfathomable that despite a detailed judgment having been passed, similar orders are continued to be passed by the same Judge. In my considered view, this appears to be a complete breach of judicial discipline that a Sessions Judge continues to pass orders in the teeth of a detailed judgment passed by this Court, expunging/deleting adverse remarks made by him against senior police officials.
16. Even on merits, delay in obtaining FSL reports in a timely manner would not tantamount to negligence on behalf of the Police Authorities. It needs no

reiteration that FSL is an independent body and in no way under the control or supervision of the Delhi Police. Therefore, it is not in the hands of Delhi Police to obtain reports from FSL in an expeditious manner. The only remedy in the hands of the Delhi Police officials is to request the FSL to provide reports in an expeditious manner, which has been duly done in this case. Therefore, there was no occasion for the Judge to call Signature Not Verified Digitally Signed By:DINESH KUMAR Signing Date:22.12.2023 IO/SHO/ACP/DCP in the Court, much less issue bailable warrants against the petitioner DCP (Crime).

17. Calling of such senior Police Officials in Court would mean that they are not able to tend to their regular work. In order to attend Court hearing, they would have to leave their work assignments. Therefore, I fully concur with the findings of the Coordinate Bench in Ajit Kumar (supra) and Sanjay Kumar Sain (supra), where such practice of summoning senior officials to Court has been deprecated.
18. In the present case, the Judge did not stop at summoning the senior Police Officials but proceeded to issue bailable warrants on account of the non-appearance of the DCP (crime) on the date before him. In this regard, an application for exemption was duly filed on behalf of the DCP wherein he had given reasons for his non-appearance and therefore, sought exemption from the Court. However, the Judge completely disregarded the said application and in a routine manner proceeded to issue bailable warrants which is completely untenable.
19. Issuance of bailable warrants in a routine manner results in lowering the image and reputation of high ranking Police Officials and would also have a bearing on their service records. It also casts a stigma and therefore, Coordinate Bench in Ajit Kumar (supra) has rightly emphasized the need to exercise judicial restraint in this regard.
20. In view of the discussion above, the directions of the Judge to direct the personal presence of IO/SHO/ACP/DCP in the present case was completely uncalled for and unwarranted. Further, the directions to issue bailable warrants against the DCP (Crime) was also completely unjustified and without any authority of law.
21. In view of the above, the following observations in the order dated 31st July, 2023 are set aside-

".....It is observed that police officials even in the crime branch are not following the standing order of the Commissioner of Delhi Police No. L&O No. 21-22 as the DO letter was written by DCP(Crime) on 21.06.2023.

In view of non-compliance of above said standing order of Commissioner of Delhi Police, the IO, SHO, ACP and DCP(Crime) are

called upon for the next date of hearing as it appears to the court that no sincere effects are not being made by these police officials to receive the report of FSL expeditiously...."

22. Further, the directions for issuance of bailable warrants against the petitioner DCP, vide order dated 2nd August, 2023, are also set aside.
23. As noted above, the same judge has been repeatedly passing orders that are in teeth of a detailed judgment by a Coordinate Bench. Hence, it is deemed appropriate that a copy of this judgment be sent to the Inspection Committee of this Court in respect of the said Judge.
24. Accordingly, the present petition is disposed of.
25. A copy of this judgment be sent to the Registrar General of this Court for compliance.

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