

ITEM NO.47+48

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Criminal) No(s).85/2018

MOHD. AKHTAR

Petitioner(s)

VERSUS

THE STATE OF JAMMU AND KASHMIR

Respondent(s)

([TO BE TAKEN UP AT 2.00 P.M.])

With

Writ Petition(s) (Criminal) No(s).86/2018

Date : 16-04-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Ms.Indira Jaising, Sr.Adv.
In WP(Crl.)85/18 Mr. Sunil Fernandes, AOR
Ms.Deepika Rajwat, Adv.
Ms.Astha Sharma, Adv.
Ms.Nupur Kumar, Adv.
Ms.Anju Thomas, Adv.
Mr.Aanchal Singh, Adv.
Mr.Rohit Singh, Adv.
Mr.Ajita Sharma, Adv.

In WP(Crl.) 86/18 Ms.Anuja Kapur, petitioner-in-person

For Respondent(s) Mr.M.Shoeb Alam, Adv.
Mr.Ujjwal Singh, Adv.
Mr.Mojahid Karim Khan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The instant writ petitions, preferred under Article 32 of the Constitution of India, relate to a minor girl, aged about eight years, who had been brutally abducted, raped and murdered, as alleged in these petitions. The said crime has led to lodging of

FIR No.10/2018, and the chargesheet has been filed in the Court of Chief Judicial Magistrate, Kathua, State of Jammu and Kashmir.

It is urged by Ms.Indira Jaising, learned senior counsel for the petitioner in W.P.(Crl.)No.85/2018 that a fair trial is an inseparable facet of Article 21 of the Constitution, and there is an apprehension in the mind of the petitioner, the biological father of the victim, that there would be no fair trial inasmuch as there has been protest by the members of the Bar and further there may be issues relating to witness protection. Additionally, it is submitted by Ms. Indira Jaising, learned senior counsel that this Court has held that there should be protection for the victim as well as the lawyer who has a right to protect the interest of the victims in the Court.

On the aforesaid foundation, it has prayed that the case arising out of FIR No.10/2018 should be transferred from Kathua, situate in Jammu and Kashmir to a Court of competent jurisdiction at Chandigarh, and to provide adequate security to the family members of the victim, to the local advocate - Ms.Deepika Singh Rajawat and her family members, and to one Mr.Talib Hussain, who has been rendering assistance to the victim's family. Learned senior counsel for the petitioner would contend that she does not intend to argue for transfer of the investigation since chargesheet has been filed in the Court and there is a possibility of filing of a supplementary chargesheet. Be that as it may, we do not intend to enter into that sphere at this stage.

On a query being made, Mr.M.Shoeb Alam, learned Standing Counsel for the State of Jammu and Kashmir submitted that the State

has provided adequate protection to the family members of the victim, and has no objection to provide security to the counsel appearing for the victim. As far as transfer of the case is concerned, he intends to file a reply.

Issue notice.

As the State has already been represented by Mr.M.Shoeb Alam, learned standing counsel, no further notice need be issued.

As an interim measure, it is directed that the respondent-State shall keep the security, as provided to the family members of the victim, in continuity; provide security to Ms.Deepika Singh Rajawat and her family members; and that protection shall be provided to Mr.Talib Hussain, who is assisting the victim's family in prosecution of the grievance by remaining present in the Court or engaging counsel to assist the public prosecutor. Ms.Deepika Singh Rajawat shall provide the details of Mr.Talib Hussain to Mr.M.Shoeb Alam, learned Sanding Counsel for the State of Jammu & Kashmir to that he can do the needful in the matter.

At this juncture, a submission has been advanced by Ms.Indira Jaising, learned senior counsel appearing for the petitioner that the State authority should provide security in plain clothes. Mr.Shoeb Alam, learned standing counsel for the State of Jammu and Kashmir accepted the same and, therefore, we direct that the security shall be provided in plain clothes.

We will be failing in our duty if we do not take note of another aspect which gets reflected in the prayer clause. The prayer relates to strengthening of security at juvenile home where

the alleged juvenile accused is lodged. Regard being had to the said prayer, we direct the State authorities to do the needful keeping in view the spirit of the care and protection of Children.

Let these matters be listed on 27.04.2018 so that we have the benefit of the reply to be filed by the State.

(Chetan Kumar)
Court Master

(H.S.Parasher)
Assistant Registrar