

Visit Note : 19 & 20 Feb 2016

District Jail Saharanpur (UP)

Shri Sunil Krishna, Special Rapporteur, NHRC NZ-II

Preliminary

1. The Protection of Human Rights Act, 1993 was enacted to provide for the constitution of the National Human Rights Commission and State Human Rights Commission ... for better protection of human rights and for matters connected therewith or incidental thereto. Section 12 of the Act states the functions of the NHRC and its sub-section (c) reads:-

12. Functions of the Commission:-

The Commission shall perform all or any of the following functions, namely:-

(c)^{ss} visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government.

2. Accordingly, I visited the District Jail at Saharanpur. DIG (Prisons), Meerut - Shri VK Shekhar and Senior Superintendent of the District Jail (SSJ) - Dr. Chaudhary Sewa Ram Singh and his officers were present.

Accommodation

3. The jail is housed in buildings of an old fort.

§ Inserted by Act 43 of 2006

converted into jail in the year 1868. It has in an area of 31.09 acres with a capacity for 533 prisoners.

- 4. The premises of the Jail have been maintained well with flower beds and green lawns. The SSJ informed that the entire area of the district jail is now under the purview of the Archaeological Survey of India and no addition/alterations/construction can be undertaken without the express authorisation from the ASI.
- 5. The number of inmates on the date of my visit was reported to be:

| Category | Male | Female | Minor | Total |
|-------------|------|--------|-------|-------|
| Convicted | 279 | 11 | - | 290 |
| Under-trial | 800 | 34 | 39 | 873 |
| | 1079 | 45 | 39 | 1163 |

Water:

- 6. Two tube-wells are installed at the Jail and an overhead tank of capacity 40K litres is available. SSJ informed me that chlorination is done as per requirement. Quarterly cleaning of the overhead tank was conducted on 30.11.2015. India-Mark-II pumps 19nos are also available. Thus the arrangements for water are satisfactory.

Sanitation

- 7. For the inmates, 53 latrines are available during the day and 22 during the night. SSJ stated that proposal for construction of 125 latrines is under consideration of the Prison Headquarters.

7
Food

6. Kitchen was found to be neat and clean. Prison Wardens, Shaitan Singh and Tek Chand stated that the lunch was served and completed. It consisted of roti, rice, daal urad, radish sabji (curry). Evening dinner was being cooked on LPG stoves. Kiran, one of the prisoners, working in the kitchen stated that he was in the prison for the last seven months and had not been granted bail. SSJ informed me that his case shall be taken up for legal assistance.

Medical facilities

7. Took a round of the hospital. It has a capacity for 20 indoor patients. Nine prisoners were getting treatment as indoor patients. General cleanliness was satisfactory. The patient inmates were satisfied with the treatment and medicines being provided to them.
8. Prisoner Dharampal stated that he was taken to the District Hospital for X-ray on 16-2-2016, but it could not be done due to non-availability of Doctor. SSJ/MO were requested to take up this matter with the CMO of the district. As the prisoners are referred to the District Hospital only when the requirement is urgent and necessary, it must be ensured that such patients who are referred to the District Hospital for x-ray/test etc; are attended on the same day as their movement from the prison, also involves deployment of scarce resources including escorts. Delay can cause serious consequences to the health of the prisoner, besides avoidable frittering away of resources.
9. An x-ray machine, purchased in 1984 and an ECG

machine purchased in 2014, are lying idle as technician is not available. This needs to be taken up early otherwise the machine may become in-operable due to non-use.

10. Another indoor patient prisoner (Dhirendra Agrawal) had no complaint regarding treatment/ medicines etc. but stated that he was an ex-MP who has been falsely implicated and is a victim of conspiracy.

Welfare of inmates

11. Mulaqaat (Visits) : In this jail, there is no designated building for the purpose of Mulaqaat. At the time of my visit, Mulaqaatis were meeting the prisoners in open space. SSJ informed me that the facility for on-line permission for meeting was available on the net by means of e-prison application. It is intriguing that these visitors meet the prisoners in the open and still no untoward incidents have been reported.
12. Video-conferencing is functional at this prison since 16-1-2016 and already this facility has been availed of in cases of 395 prisoners. Now, that this practice of video-conferencing is well established, it would be necessary to fix timings for video-conferencing so that all arrangements are on schedule and unnecessary uncertainty and waiting is avoided.
13. SSJ informed that the inmates were encouraged to take up Yoga and Meditation and for this purpose, assistance was obtained from organisations like "Art of Living" and "Brahmkumaris". Games of volleyball and indoor games of carrom and chess as well as TV sets are also available. A library with over 500

books is functional for the inmates.

14. Skill Development Mission is imparting the inmates the skills of sewing, envelope making, pottery and bakery. Female inmates are being trained for beauticians and Mehdi artists.
15. Post of a Teacher is sanctioned for the jail and 3 inmate-teachers assist him in education of 282 illiterate inmates.

Accommodation and inmates:

16. Visited the barracks nos. 1,2,3,4 and 9. Cleanliness in the barracks and toilets were satisfactory. The number of prisoners lodged in these barracks were :-

Barrack no.1 - 116

Barrack no.2 - 102

Barrack no.3 - 124

Barrack no.4 - 127

Barrack no.9 - 62

17. None of the prisoners made any complaints regarding the living conditions in the Jail, but many of them claimed that they were falsely implicated and need legal assistance. Brief details of such prisoners is given below:-

18. Barrack no.1 & 2: Prisoner Santosh stated that his case is to be decided by Lok Adalat and he needs legal assistance.

19. Prisoner Waqaar stated that he has been sentenced to life imprisonment and has spent 12 years in jail, has been out on parole on 5 occasions, his mercy petition is pending for decision, which may be expedited.

20. Prisoner Raju s/o Ramkishan stated that he has been

convicted in a murder case and sentenced to life imprisonment. He has spent eight years in Jail and has preferred a private appeal, which is pending. He requested that its decision may be expedited.

21. Barrack no.3 : Prisoner Yashpal stated that he was falsely implicated due to enmity, and the police investigation had cleared him, but he has not received justice. He requested expeditious disposal of his case.
22. Barrack no.9 : Prisoner Bhairon stated that he has been falsely implicated and requested for legal assistance.

Adolescents' Ward :

23. Persons between the age of 18 and 21 are being detained here. They had their history-tickets with them. The history-ticket of Prisoner Nadeem had cutting/overwriting on the dated of remand, which may be checked and corrected. He requested that his case may be decided in Lok-Adalat for quick disposal.
24. Similar request of quick disposal of his case by Lok-Adalat was made by Raqeeb s/o Mobin.
25. Aakash s/o Dharamvir stated that he had applied for appearing at the high-school examination from IGNOU and has been allotted centre in Ghaziabad, but has not been permitted to move to Ghaziabad and therefore he will not be able to take the examination. SSJ noted to look into this case and take immediate further action according to the rules to present the request to the concerned Court.

Female Barracks

26. Female Barrack has the sanctioned capacity of just 7. Presently 45 women are detained here. The overcrowding is thus to the tune of 543%. Most of these women are charged with offences under the Prevention of Dowry Act. Children, who are staying with their mothers are provided the prescribed diet of milk and fruits. SSJ stated that the expansion of the Female Ward is a pressing necessity, but it has not been taken up in view of the restrictions due to the Jail (the old fort) being under the purview of ASI. SSJ was advised to chalk-out the proposal in consultation with the ASI and take further action for increasing the capacity of the female ward.

Staff of the Prison Department

27. On 20.02.2016, the personnel working in the prison were addressed by me and they were briefed about the role of NHRC and its expectations from prison authorities. The action required by them on the occurrence of a death in custody, was emphasised.

28. On being asked, following suggestions were put forth by the staff:

Shri AK Singh, Deputy Jailor stated that many of the persons received in the jail, are addicted to drugs at the time of entry in jail. De-addiction facilities do not exist here in the jail. It was suggested that a "de-addiction centre" with qualified peronnel may be opened. District Jail is having a very large number of prisoners and a "de-addiction" appears to be a necessity. DIG(J) and SSJ were requested to initiate action for it.

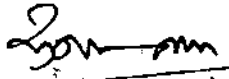
27. Mohd. Shamin, Prison Warder stated that in case of

death of a detainee, his relatives get upset and create a law and order situation at the Jail, even if the prison authorities are not at fault. He suggested that in such cases of death, the relevant police station of residence of the detainee should also be informed in addition to the the local police station where the Prison is situated.

28. Other personnel were concerned about the delay in promotions. It was said that promotions to the rank of Deputy Jailor has not been sanctioned to Reserve Head Warders since 1999 and Reserve Warders, recruited in 1984 have still not received promotion as Reserve Head Warder. DIG (J) informed that such promotions were being finalised at the State level and orders were expected shortly.
29. Pharmacist Sudhir Kumar stated that there were no provision of promotion of Pharmacists and requested that this may be examined.
30. Jail personnel are trained to use fire-arms, but fire-practice was last conducted in 2008. State prison department may examine the need and feasibility of including an annual firing practice for the uniformed jail personnel.

Sub-Jail at Deoband

31. Visited the Sub-Jail at Deoband on 20.02.2016. This sub-jail was started in 1990 and has a capacity for 121 male and 10 female prisoners.
32. Visit note is submitted.


 18/5/2016
 (Sunil Krishna)
 Special Rapporteur
 NHRC NZ-II

Visit Note : 20.2.2016

Govt. Aftercare Home for Women, Fatehpur distt. Saharanpur(UP)

-Shri Sunil Krishna, Special Rapporteur, NHRC NZ-II

1. Visited the Govt. Aftercare Home for Women. DIG (Prisons), Meerut - Shri VK Shekhar, ADM (F&R) Saharanpur - Shri Syed Nizamuddin and District Probation Officer, Meerut - Shri Pushpendra Singh accompanied me. Shri Pushpendra Singh is looking after the work of District Probation Officer (DPO) Saharanpur, as the post is vacant at present.
2. Smt. Meenu Singh, Superintendent of the Home is presently on long leave. Smt. Indu Bala Badauni, Assistant Teacher is working as in-charge Superintendent. Staff mentioned in Appendix A were present at the time of visit. Sixty inmates are present in the Home and their list is available in the Attendance Register.
3. A notice has been put up on a board outside the entrance of the Home to the effect that only the Supdt/Asstt Supdt. will receive donations and a receipt shall invariably be issued to the donor. A copy of the receipt shall be kept safely in the office records. If a donor refuses to acknowledge receipt of the "official receipt", his donation shall not be accepted. DPO said that, "secret donations" are thus discouraged.

4. The premises were found to be neat and clean and the rooms in which the inmates stay were very orderly and neatly kept. Adequate number of toilets and bathrooms are available and their upkeep is satisfactory. One of the bathrooms was found locked and it was informed that it is under repair.
5. The "History and Personal care plan" of the inmates have been maintained in file(s). "Baal Samiti" and " Management Committee" have been constituted and minutes, of the meetings held, are maintained.
6. Two Home Guards are provided by the district administration for the security of the Home. The i/c Supdt. stated that the male employees are not allowed to enter the residential premises.
7. A menu has been pasted in the kitchen. Meals are served at scheduled hours :-
- 8 am. - Breakfast
1 pm. - Lunch
4.30 pm- Milk / Juice
7 pm. - Dinner
8. The inmates had assembled in the Recreation Room and the staff enthusiastically showed the samples of drawing, painting, sewing, embroidery, knitting etc. being produced by them. Supdt. i/c showed the neat suits stitched and the fine embroidery made by inmates Poornima and Nooresha. It was good to see the two youngest children, call out the names of all

the inmates. They have learnt it by heart by listening to the names being called out at the morning and evening attendance.

9. A complaint-box is kept on the premises. Supdt i/c states that inmates have been told about it. The inmates, on being asked, made no critical comments, but suggested that the open grounds could be converted into lawns, gardens and play-courts. The DPO was advised to take action to implement this extremely useful suggestion.

10. Kitchen and its store are maintained neatly. Grains and spices are maintained in labelled containers. At the time of visit, lunch had been prepared which consisted of Arhar Daal, Chapattis, Rice and mixed vegetable of potatoes, peas and carrot. The quality of preparation is good.

11. Women (above 18, helpless destitutes), are provided employment oriented training and made self dependent - rehabilitated by uniting them with their families/marriage.

12. District Probation Officer stated that action is needed for rehabilitation of the inmates who wish to be married. U.P. Govt, vide order no. 14/2015/660/60-1-15-i/16 (120) dated 25.5.2015 has constituted a Committee under the District Magistrate or his representative (not below the rank of ADM). District Probation

Officer is the Member - Secretary and the Medical Officer, Supdt of the Aftercare Home and the Chairman/Member of the Juvenile Welfare Board are the other members of the Committee. It is necessary that the Committee chalks out a plan of action with time-limits, so that this very important aspect of rehabilitation is completed in right earnest at the earliest possible. Supdt i/c informed that age-related tests have been completed for 28 inmates who are marriageable.

13. "Inspection, Evaluation and Advisory Committee" has been formed under the chairmanship of an ADM nominated by the District Magistrate. The District Probation Officer is the Member-Secretary and the other members are :-

- * Police Officer (not below the rank of a Circle Officer) nominated by the SSP/SP.
- * Two respectable social/workers /representatives of local NGO nominated by the District Magistrate.

The DM can invite a Judicial Magistrate and seek his advice and co-operation, in consultation with the District Judge.

13. This committee has been formed in accordance with the Govt. orders issued vide Women & Child Welfare Deptt Om no. 1057/60-1-2012-1/13(25)/2012 dated 09 April 2012. It prescribes that the Committee shall have the following duties:-

- i) Surprise inspection of all departmental institutions, every month.
- ii) Arrangements for food, medical and health, education and training, sports & recreation of the inmates, their rehabilitation and efforts to re-unite them with their families.
- iii) Maintenance of the Personal Profiles of the inmates, attendance of the staff, effective action to prevent ingress of male employees in institutions for women/girls/infants. The Committee shall also check the behaviour and conduct of the staff towards the inmates.
- iv) Separate Confidential hearing and follow-up of complaints made by children. When the Committee makes such oral inquiries, none of the officers/employees will be allowed to be present.

Committee will conduct detailed inspections. The observations of the Committee contained in the Inspection Report shall be sent forthwith to the District Magistrate/SSP/SP and a copy shall also be submitted to the Directorate of Women's Welfare, U.P.

Shortcomings/complaints shall be attended to by the DM at the district level. In case of death of an inmate or escape of an inmate or complaint by them - the matter will be taken up by the Committee with urgency and committee

shall conduct preliminary inquiry and submit its report/recommendations for action.

DM/SSP are expected to sensitize the SHOs of the Police Stations in whose jurisdiction such institutions are situated that they should collect timely intelligence. The Local Intelligence Unit shall also be directed to collect secret intelligence. All efforts should be made by the DM and the SSP who will provide leadership for action to ensure security of the inmates and to prevent their exploitation. The co-operation of locally active NGOs and certified women's organisation could also be taken.

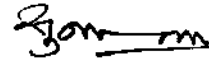
14. During my visit, Supdt. i/c showed that the inspection reports are being kept on a file and compliance of instructions are being made.

15. Thirteen inmates were reported to be suffering from mental diseases. Their names are mentioned in Appendix-B. DPO stated that reference is being made to shift them for treatment to Govt. Mental Hospital, Bareilly. Supdt i/c stated that great difficulty was faced in transfer of mentally ill inmates to Institute of Mental health and Mental Hospital at Agra and Bareilly. Sometimes, it takes days to complete the formalities and the Home has to somehow manage. This serious aspect needs to be examined at the State Govt. level in the Department of

Women and Child Welfare "in" consultation with
Ministry of Health and Home.

16. Supdt i/c also brought to notice that the sanctioned posts of an Investigator (अन्वेषक) Music Teacher, Crafts Teacher, PT Instructor and Trained Nurse are vacant, which hampers working of the Home at the desired standard. This aspect needs to be looked into at the State Govt. level.

17. Visit note is submitted.

 18/5/16

(Sunil Krishna)
Special Rapporteur
NHRC NZ-II

Appendix - A (Staff present)

Shri Sunil Kumar, Crafts Teacher i/c Accts and Store Keeper

Smt. Saroj, Cook

Shri Shyam Lal - Class IV

Shri Rishipal - Class IV

Shri Musharraf Yaar Khan - Class IV

Smt. Anjana Saini - Asstt. Teacher-from Deptt of Basic Edn.

Smt. Anita - Asstt. Teacher-from Deptt of Basic Edn.

Smt. Rani - Part time Cook

Smt. Usha - Home Guard

Smt. Raj Kumari - Home Guard

Appendix - B (Mentally ill inmates)

| Sr No | Name | Age (approx) | Received from |
|-------|----------|-----------------|----------------------------------|
| 1 | Saroj | 45 | SDM Dadri, Gautam Budh Nagar |
| 2 | Murshida | 45 | SDM Kairana, Muzzafarnagar |
| 3 | Shiya | 22 | Child Welfare Committee, Kanpur |
| 4 | Kassi | 22 | City Magistrate, Saharanpur |
| 5 | Jyoti | 21 | SDM Shamli |
| 6 | Pooja | 30 | SDM Khatauli, Muzaffarnagar |
| 7 | Chandni | 20 | SDM Nakud, Saharanpur |
| 8 | Madhuri | 20 | City Magistrate, Bareilly |
| 9 | Aarti | 30 | District Magistrate, Faizabad |
| 10 | Mamta | 20 | Child Welfare Committee, Lucknow |
| 11 | Suman | 30 | City Magistrate, Bareilly |
| 12 | Bablee | 20 | Addl City Magistrate I, Lucknow |
| 13 | Geeta | 20 | SDM Mawana, Meerut |

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Visit to district Saharanpur (Feb 2016) : Some interesting facts

Shri Sunil Krishna Special Rapporteur NHRC NZ-II

Some interesting facts which emerged during my visit to the district are mentioned below.

History of the Jail : Fort converted

1. In the district jail, an inscription in Hindi, which appeared to have been originally recorded in 1949 and thereafter copied at every whitewash of the walls, states that a tomb which exists on the premises of the Jail was the mazaar of one Budhshah, a descendant of Saint Shah Haroon Chisti, who founded the city of Saharanpur in the thirteenth century during the reign of Mahammad Bin Tughlaq. The name "Saharanpur" is said to have come from "Shah Haroon Pur". The mazaar is revered by both the Hindus and the Muslims. The inscription also states that the jail premises were originally a Rohilla fort built by Raja Inder Giri in 1791. Rohillas were the Afghan soldiers who were part of the Mughal Army and settled in the region of Saharanpur and Bareilly. Raja was defeated by the British, who in 1868, converted the fort into a prison with 232 prisoners. Major changes in the building were made in 1922. Before that, in 1908, a "European Ward" was added. In the year 1948, a maximum number of prisoners (1107) were housed in this jail. On the day of my visit (19.02.2016), the total number of prisoners was 1163. Two photographs of the jail are attached at Appendix A-1.

Intervention of Archaeological Survey of India

2. It was learnt that in 2014, when the State authorities had planned to demolish the existing perimeter wall and replace it with a 22 feet high boundary wall, the Archaeological Survey of India (ASI) intervened and asked the prison authorities to abort the project so that the ASI could itself take up the restoration work of the wall and the four bastions located on the corners of

the 18th century fort.

Ex-MP inmate granted bail by High Court

3. In the Jail Hospital, Shri Dhirendra Agrawal (62) an under-trial prisoner introduced himself as a former MP who had won the Lok-Sabha election three times. He was highly critical of the District Magistrate in whose tenure he was arrested.
4. An internet-search reveals Shri Dhirendra Agarwal was reported to be the richest MP from Jharkhand in the 14th Lok Sabha. He had represented Chatra Lok Sabha seat in Jharkhand thrice, as a BJP MP in 1996 and 1998 and again as an RJD member in 2004. Even at that time, he used to be unhappy with the district administration, as is evident from a news-item in daily "Telegraph" (copy attached at Appendix A-2). He owned the Daya Sugar Mills in Saharanpur. An FIR was registered against him at Gagalhedi police station in October, 2012 under IPC sections relating to fraud besides the Essential Commodities Act. Police managed to arrest him after more than a year in December, 2013.
5. A perusal of the copy of the order passed by the Hon'ble High Court of Allahabad (Appendix A-3) on his third bail-application shows that the prisoner has not fulfilled the conditions of the bail and therefore continues to be in the jail. The Hon'ble High Court on 15-Dec-2015 granted him bail with observations and conditions :-

"as of now Rs. 1112.03 Lacs (Eleven Crores Twelve Lacs Three Thousand only) is due along with interest. This amount should be paid by the applicant as directed by the Apex Court and various Benches of this Court.

18. Let applicant Dhirendra Agarwal be enlarged on bail on his furnishing two sureties and personal bond to the satisfaction of the court concerned in Case crime no. 287 of 2012, under sections 409, 420, 418, 467, 468 and 120-B IPC and 3/7 of the Essential Commodities Act 1955, Police Station Gagalhedi, District Saharanpur on the following conditions:-

I. The applicant shall deposit Rs. 1112.03 Lacs (Eleven Crores Twelve Lacs Three Thousand only) in the account specified by the District Magistrate, Saharanpur to be used by him/her for payment of outstanding dues of farmers in accordance with law.

II. The applicant shall deposit his passport before the

Magistrate.

III. The applicant shall continue to attend and cooperate in the trial pending before the court concerned on the date fixed after release.

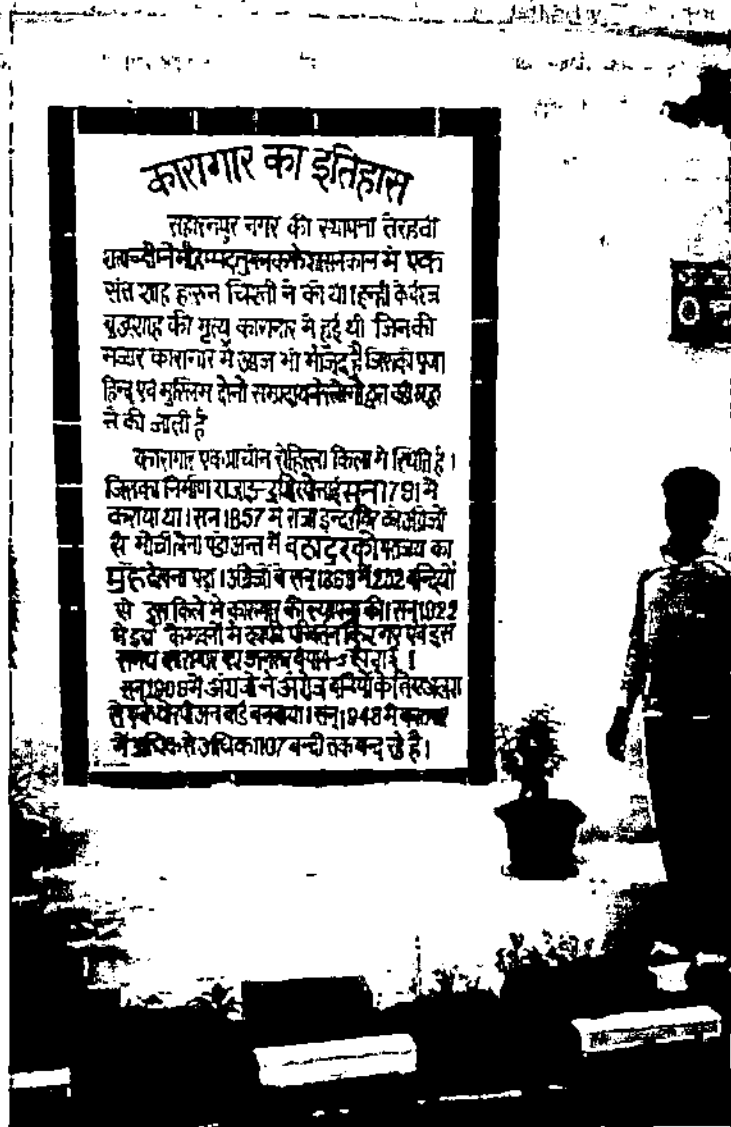
IV. The applicant shall not tamper with the witnesses."

Precocious children at After-care Home

5. At the "After-Care Home for Women", the smallest children, who were staying with their mothers, could recite the names of all the 60 inmates of the "Home" in the order in which the names were written in the Attendance Register. It was interesting to see that just by repeatedly listening to the roll-call, they had learnt it by heart. A photograph, of the children staying at the Home is attached at Appendix A-4.

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Photographs (2) of District Jail Saharanpur, 19-Feb-2016



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Choice of babu leaves MP fuming

RANJAN DASGUPTA



Agarwal: Annoyed

presence of the Lok Sabha parliamentarian. The last meeting was held around three months ago.

Ranchi, Nov. 24: Chitra parliamentarian Dhirendra Agarwal is apparently annoyed with chief minister Madhu Koda for not replacing the existing deputy commissioner with the one of his choice.

Shatrughan Kuwar, the deputy commissioner, has been retained in Chitra during the last bureaucratic shuffle and the one, who the RJD MP had sought, was given charge of a neighbouring district, said sources at the government.

The sources added that the immediate reason for demanding Kuwar's ouster from Chitra was due to the fact that the ageing officer—who will retire in January—had the guts of convening the district rural development agency (DRDA) meetings to prepare the projects which will be taken up in the rest of the fiscal without the

The district administration had to cancel the meeting twice in the past on Agarwal's request. Although Agarwal had assured the DRDA officials to take part at the meeting on November 6, but at the last moment he again postponed it on the pretext of his "busy schedule". But Kuwar refused to oblige him and held the meeting, as scheduled.

Inquiries revealed that Agarwal spends more time at Gaya than his constituency. He has even appointed two of his aides, Pappu Gupta and Mahesh Gupta, to oversee all activities in his constituency. "The duo interacts with all officers concerned and decides the projects that would be taken up. They report matters to the MP. Is this the manner in which a public representative should discharge his duties for the people who have elected him" said an officer of Chitra district administration.

Officers recollected how Pappu and Mahesh dictated terms with officers and tried to extract their pound of flesh in projects. When the officers refused to oblige, matters were reported to the MP for further action. "We had requested several times to Agarwal to interact directly with us so that his aides could not make unethical demands. But he cared little," said a senior functionary of the district.

In August, Agarwal demanded the ouster of the young and honest IAS officer, Kamal Kishore Soan, as the Lathehar deputy commissioner during a meeting of the 20-point implementation programme meeting in presence of the former chief minister, Arjun Munda. Munda did not pay any heed to Agarwal's demand and later the UPA government made Soan the Ranchi deputy commissioner for the officer's impeccable track record.

The MP, whose business interest revolves around timber and stone quarry, had even antagonised the forest officials of Betla two years ago when he protested the action against some of his supporters. Apparently, the forest officials during an operation against illegal timber trade had booked some of his supporters. Agarwal was furious alleging that false cases were lodged against his supporters.

Although Agarwal could not be contacted despite several attempts, the Latehar RJD MLA, Prakash Ram, defended his party colleague. "He wants Kuwar's removal as he has failed to deliver the goods. We want an honest officer in that district," Ram added.



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HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 55

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31950 of 2015

Applicant :- Dharendra Agarwal
Opposite Party :- State Of U.P.
Counsel for Applicant :- Arjun Singhal, V.P. Srivastava
Counsel for Opposite Party :- Govt. Advocate, Ravindra Singh

Hon'ble Bharat Bhushan, J.

1. Heard Sri VP Srivastava, learned Senior Advocate assisted by Sri Lav Srivastava and Sri Arjun Singhal, counsel for the applicant, Sri Ravindra Singh, learned counsel for the complainant, learned AGA for the State and perused the record.
2. This is third bail application filed on behalf of accused-applicant Dharendra Agarwal, a former Member of Parliament, owner and Director of Sugar Mill.
3. First Bail Application No. 4166 of 2014 in Case Crime No. 287 of 2012, under sections 409, 420, 418, 467, 468, 120-B of the Indian Penal Code (in short ?IPC?) and 3/7 of the Essential Commodities Act 1955, Police Station Gangalhedhi, District Saharanpur was dismissed by this Court vide order dated 06.05.2014.
4. The second Bail Application No. 32739 of 2014 in of the accused applicant was dismissed by this Court vide order dated 29.05.2014.
5. Counter and rejoinder affidavits filed on behalf of the rival parties, are on record.
6. It is stated that District Magistrate Saharanpur issued a tagging order dated 15.11.2010 to ensure payment of dues to the Sugarcane farmers for crushing season 2010-11 whereby sugar production during the season was to be pledged to the bankers and 85% of the advance money received from the bank was to be used for payment of cane dues and commission by depositing that amount in a separate bank account. The Indian Overseas Bank vide letter dated 14.6.2011 disclosed that as against the collateral of 160462 qts. of sugar for crushing season 2010-11, the bank had advanced Rs.5067-04 lacs to the concerned sugar mill, which was under legal obligation to transfer 85% of the amount i.e. Rs.4306-98 lacs for payment to the sugarcane farmers, but the sugar mill owners merely paid Rs.2580-56 lacs as sugarcane dues and commission and misappropriated rest of the amount. The F.I.R. was lodged and investigation was done. Stock was also verified which indicated that large amount of sugar had been clandestinely removed by sugar mill owner in collusion with the bankers without making any payment to the sugarcane farmers and the Government.
7. The F.I.R. says that payment of almost Rs.853.84 lacs is pending against sugar mill for the crushing season 2010-11. It is stated that not only the tagging order was openly and deliberately flouted but a large amount of sugar stock was surreptitiously removed in collusion with the bankers by sugar mill owner/Director and Occupier. The criminal case was registered against the applicant in October, 2012 but Police could

arrange to arrest him after almost 15 months in December, 2013. The bail application was moved on behalf of owner/ director/occupier/applicant but was dismissed vide order dated 6.5.2014. Some relevant portion of the order dated 6.5.2014 passed in first bail application are hereunder:-

12. Learned counsel for the informant and learned Additional Government Advocate, have also drawn attention of this Court of several attempts of the applicant to scuttle criminal proceedings against him. He invoked jurisdiction of the Division Bench of this Court in Cr. Misc. Writ Petition No. 10987 of 2013 (Dhirendra Agrawal versus State of U.P. and others) which stayed the arrest of applicant till the submission of police report under section 173(2) Cr.P.C. on deposition of Rs. 9,18,24,000/- (Rs. Nine Crore Eighteen Lacs twenty four thousand) with interest within 30 days of order. The order dated 31.5.2013 passed by the the Division Bench is reproduced below :-

"Heard the learned counsel for the petitioner Dhirendra Agrawal and the learned A.G.A. and Sri Ravindra Singh for respondent no. 3.

This petition has been filed by the petitioner with a prayer to quash the F.I.R. in case crime no. 287 of 2012, under sections 406, 409, 419, 420, 120-B I.P.C. and section 3/7 of E.C.Act, P.S. Gagah Hedi, District Saharanpur.

From the perusal of the F.I.R. of above mentioned case, it appears that on the basis of the allegations made therein a prima facie cognizable offence is made out. There is no ground for interference in the impugned F.I.R. Therefore, the prayer for quashing the impugned F.I.R. is refused. However, considering the facts and circumstances of the case, it is directed that in case the petitioner deposits the can-dues amounting Rs. Nine Crore Eighteen Lacs twenty four Thousand with its interest within 30 days from today to the respondent no. 3, along with bank advice, the petitioner shall not be arrested till the submission of the police report under section 173(2) Cr.P.C. In default of it, the I.O. shall be free to make the arrest of the petitioner. With the above direction this petition is finally disposed of."

13. That instead of complying with the aforesaid order of this Court, the applicant again requested the Court to modify its earlier order dated 31.5.2013, which was declined and following order was passed on 17.1.2014:-

"This application has been moved with a prayer to modify the order dated 31.5.2013. The order dated 31.5.2013 does not require any modification. Therefore, the prayer for modifying the order dated 31.5.2013 is refused. However, it shall be open to the petitioner to move the application with regard to bail application consideration before the appropriate bench.

Accordingly, this application is dismissed."

14. A criminal case registered against the accused-applicant in October, 2012 could only result in his arrest after almost 15 months in December 2013. The case diary reveals that instead of cooperating with the authorities, the applicant ran away to various places. The record reveals that various places includes Kolkatta, Patna, Gaya, Rachi, Hunterganj and new Delhi were searched and raided. The news was flashed by print media as well as visual media. Pamphlets were published and distributed and look out notice issued and yet the applicant did not surrender before the court of law. Additional Chief Judicial Magistrate issued Non-bailable warrant and process under section 82 Cr.P.C. but applicant failed to honour the orders of the court. It is not his case that he was not aware of proceedings against him. He invoked jurisdiction of this Court at least on two occasions by filing Cr. Misc. Writ Petition and thereafter sought modification of order dated 31.5.2013. Prosecution has informed that accused-applicant is also facing at least two cases of similar category in Case crime no. 207/2010, under sections 405, 418, 420, 120-B IPC and section 5/8/12 of Sheera

dated 04.02.2013 that the cane office has calculated the tagging amount on the basis of total stock which relates to the previous years also and it does not confine to only crushing season 2010-2011. Prima facie case for interim relief is made out.

Till further orders of this Court, further proceedings in Case No.362 of 2014, State Vs. Dharendra Agarwal in Case Crim.No. 287 of 2012 under Sections 409, 420, 418, 467, 468 and 120-B of I.P.C and Section 377 of Indian Penal Code, Essential Commodities Act, Police Station Gagalheri District Saharanpur, pending before the First Additional Chief Judicial Magistrate, Saharanpur shall remain stayed.

11. Learned Senior Advocate submitted that on one hand the his case has been stayed by coordinate Bench of this court and other other hand he is suffering incarceration since long time despite the fact that all the offences are triable by the Magistrate. He has submitted that considering the huge pendency of cases, it would not be possible to conclude the trial in near future. He submits that it would not be appropriate to keep the applicant in jail till the conclusion of the trial especially in view of the interim order dated 21.11.2014 passed by a coordinate Bench of this Court in Application U/s 482 No. 41403 of 2014.

12. This argument cannot be ignored that the accused is in jail for last two years and this a case triable by the Magistrate which has now been stayed by coordinate Bench of this Court, therefore, in the interest of justice, the accused can be enlarged on bail on some conditions.

13. It is pertinent to point out that the accused applicant had invoked the jurisdiction of Division Bench of this Court by filing Criminal Misc. Writ Petition No. 10987 of 2013 (Dhirendra Agarwal v State of U.P. and others), wherein the arrest of the applicant was stayed till submission of the police report under section 173 (2) of the Code of Criminal Procedure subject to the deposit of Rs. Nine Crores, eighteen Lacs and Twenty four thousand only (Rs. 9,18,24000 Only) with its interest. This amount was to be deposited within 30 days of the order dated 31.05.2013. This order has already been quoted in paragraph 6 of this order. Accused applicant did not comply with the aforesaid order of the Court and requested the Division Bench to modify its earlier order, which was declined vide order dated 17.01.2014.

14. Learned counsel for the complainant has drawn attention of the Court towards the order of the Division Bench of this Court at Lucknow passed on 02.05.2011 in Misc. Bench No. 4053 of 2011 wherein the applicant assured the Court to deposit the entire amount including the interest etc., within the stipulated time provided by the Court. Relevant portion of the aforesaid order is reproduced below:
 ?At the outset, learned counsel for the petitioner on the basis of instructions, stated that the petitioner is not disputing the liability of the amount which is under demand but he seek, some time for making the deposit. Learned counsel for the respondents say that they do not have any objection, if reasonable time is granted to the petitioner and the petitioner assures that the entire amount including the interest etc. will be deposited within the time provided by the Court. The petitioners agree to do so.

15. Learned AGA as well as learned counsel for the complainant submitted that this order was never complied with by the applicant. It appears that another petition was filed by the applicant bearing Misc. Bench No. 5982 of 2011 before Lucknow Bench of this Court which was also dismissed by the Division Bench. It is also stated that a Special Leave to Appeal (Civil) No. 16553 of 2011 before the Apex Court wherein vide order dated 30.06.2011 it was directed that the petitioner (herein applicant) shall deposit the balance amount with the Cane Commissioner on or before 21st July 2011. The aforesaid order passed by the Apex Court is being reproduced herein below for ready reference:-

"Mr. Ravi P Mehrotra, learned counsel appears for the State. Considering the grievance expressed by the

petitioner, the petitioner is permitted to deposit the balance amount with the Cane Commissioner on or before 21st July 2011. Till such time, no coercive steps shall be taken. It is made clear that no further extension shall be granted."

16. Learned counsel for the complainant has submitted that none of the aforesaid orders have been complied with by the applicant till date. Therefore, in the light of the various directions of this Court as well as various directions of different Benches of this Court as well as of Apex Court, it would be appropriate to enlarge the applicant on bail subject to certain terms and conditions. Earlier a Division Bench of this Court had directed him to deposit Rs. Nine Crores, Eighteen Lacs and Twenty four thousand only (Rs. 9,18,24000 Only) with its interest.

17. Learned counsel for the applicant has submitted that since then the amount has increased on account of accrued interest. Short counter affidavit indicates that as of now Rs. 1112.03 Lacs (Eleven Crores Twelve Lacs Three Thousand only) is due along with interest. This amount should be paid by the applicant as directed by the Apex Court and various Benches of this Court.

18. Let applicant Dharendra Agarwal be enlarged on bail on his furnishing two sureties and personal bond to the satisfaction of the court concerned in Case crime no. 287 of 2012, under sections 409, 420, 418, 467, 468 and 120-B IPC and 3/7 of the Essential Commodities Act 1955, Police Station Gagahedi, District Saharanpur on the following conditions:-

I. The applicant shall deposit Rs. 1112.03 Lacs (Eleven Crores Twelve Lacs Three Thousand only) in the account specified by the District Magistrate, Saharanpur to be used by him/her for payment of outstanding dues of farmers in accordance with law.

II. The applicant shall deposit his passport before the Magistrate.

III. The applicant shall continue to attend and cooperate in the trial pending before the court concerned on the date fixed after release.

IV. The applicant shall not tamper with the witnesses.

19. In case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail.

Order Date :- 15.12.2015

shailesh

Photograph of children at After care Home for Women in District Saharanpur : 19-Feb-2016



↑ ↑
Two youngest
Children