

ITEM NO.10

COURT NO.4

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 (Criminal) No.113/2016

KAUSHAL KISHOR

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH AND ORS.

Respondent(s)

Date : 29/08/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE C. NAGAPPAN

Mr. Fali S. Nariman, Sr. Adv. (A.C.)

Mr. S.C. Sharma, Adv.

For Petitioner(s) Mr. Kisley Pandey, Adv.

Mr. Ankur Gogia, Adv.

Mr. Rishi Kapur, Adv.

Ms. Manju Jetley, AOR

For Respondent(s)

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

Heard Mr. Kislay Pandey, learned counsel for the petitioner.

It is submitted by Mr. Pandey, learned counsel appearing for the petitioner that in this petition preferred under Article 32 of the Constitution of India, the petitioner, the father of the victim girl, has been disillusioned about the process of fair investigation in the State of Uttar Pradesh because of various developments and,

more so, with regard to the public addresses made by the respondent No.2 herein, have taken place and, therefore, the case needs to be transferred to another State. He has referred us to the statements of certain persons and also pointed to paragraph 3.23 of the writ petition, where the respondent No.2, as alleged, has termed the entire incident as a "political conspiracy only and nothing else". Be it stated, an F.I.R. No.0838 dated 30<sup>th</sup> July, 2016, has been lodged at Police Station Kotwali Dehat, District Bulandshahar, Uttar Pradesh, for offences punishable under Sections 395, 397, 376-D and 342 of the Indian Penal Code, read with Protection of Children from Sexual Offences Act (POCSO Act).

In course of hearing, we have requested Mr. Fali S. Nariman, learned senior counsel, to assist the Court as Amicus Curiae, as, according to us, four important issues emerge for consideration. They are:

- (a) When a victim files an F.I.R. alleging rape, gang rape or murder or such other heinous offences against another person or group of persons, whether any individual holding a public office or a person in authority or in-charge of governance, should be allowed to comment on the crime stating that "it is an outcome of political controversy", more so, when as an individual, he has nothing to do with the offences in question?
- (b) Should the "State", the protector of citizens and responsible for law and order situation, allow these comments as they have the effect potentiality to create a distrust in the mind of the victim as regards the fair investigation and, in a way, the entire system?

- (c) Whether the statements do come within the ambit and sweep of freedom of speech and expression or exceed the boundary that is not permissible?
- (d) Whether such comments (which are not meant for self protection) defeat the concept of constitutional compassion and also conception of constitutional sensitivity?

Issue notice, returnable within three weeks.

Dasti, in addition, is permitted. Apart from Dasti service, a copy of the writ petition be served on Mr. Ravi Prakash Mehrotra, learned Standing Counsel for the State of U.P.

Learned counsel appearing for the petitioner shall hand over a copy of the writ petition to Mr. S.C. Sharma, learned counsel, who shall assist Mr. Fali S. Nariman, learned senior counsel, in this case.

In the meantime, as an interim measure, it is directed that there shall be stay of the further investigation pertaining to F.I.R. No.0838 dated 30<sup>th</sup> July, 2016.

Let the matter be listed on 27<sup>th</sup> September, 2016.

(Chetan Kumar)  
Court Master

(Shakti Parkash Sharma)  
Court Master