Azadi Ka Amrit Mahotsav

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. 7351-7421 ....Genl.I/F. 3(A)/N-W & N/RC/2023 Delhi, dated 15/03/2023

Sub: Order/Judgment dated 01.03.2023 passed by the Hon'ble High Court of Delhi in Writ Petition (Criminal) No. 76/2023 titled as " Sanjay Kumar Sain Vs. State of NCT of Delhi.

Letter bearing No. 13165/Crl. dated 10.03.2023 received from the Hon'ble High Court of Delhi along with the copy of judgment/order dated 01.03.2023 passed by the Hon'ble Ms. Justice Swarana Kanta Sharma (Delhi High Court) in Writ Petition (Criminal) No. 76/2023 titled as " Sanjay Kumar Sain Vs State of NCT of Delhi is being forwarded for information and necessary action/compliance to:-

1. All the Ld. Judicial Officers **(DHJS & DJS)**, **North-West** and **North** District, Rohini Courts, Delhi.

2. The Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE.

3. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.

(SEEMA MAINI)
Principal Judge, Family Court
Officer In-charge, General Branch
North-West & North Disrict
Rohini Courts Complex, Delhi

Encl: As above

C/O **MOST URGENT** D-1

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 13165 / Crl. Dated: 10.3.2023

From:

The Registrar General,
High Court of Delhi.
New Delhi

To,

1. The District & Sessions Judge (HQ), Tis Hazari Court, Delhi
2. The District & Sessions Judge, West, Tis Hazari Courts, Delhi
3. The District & Sessions Judge, New Delhi, Patiala House Courts, Delhi
4. The District & Sessions Judge, South, Saket Courts, Delhi
5. The District & Sessions Judge, South East, Saket Courts, Delhi
6. The District & Sessions Judge, East, Karkardooma Courts, Delhi
7. The District & Sessions Judge, North East, Karkardooma Courts, Delhi
8. The District & Sessions Judge, Shahdara, Karkadooma Courts, Delhi
9. The District & Sessions Judge, North West, Rohini Courts, Delhi
10. The District & Sessions Judge, North, Rohini Courts, Delhi
11. The District & Sessions Judge, South West, Dwarka Courts, Delhi
12. Sh. Pawan Kumar Matto, Ld. ASJ, North-East, Karkardooma Courts, Delhi
13. The Director (Academics), Delhi Judicial Academy,Sector 14 Dwarka, Dwarka, Delhi.

WRIT PETITION (CRIMINAL) NO. 76/2023

Sanjay Kumar Sain Petitioner(s)

VERSUS

State of NCT of Delhi Respondent (s)

Petition under article 226 of the Constituion of India read with Section 482, Cr.P.C. For quashing and setting aside of impunged orders dated 13.10.2022, 24.11.2022 and 07.12.2022 passed by the Court of Sh. Pawan Kumar Matto, Ld. ASJ, North-East, Karkardooma Courts, Delhi in sessions case no. 298/2019 titiled- "State vs Sunil @ Kallu & Ors." to the extent of observations and remarks made against the petitioner herein and bailable warrants issued vide order dated 07.12.2022

Sir,

I am directed to forward herewith for immediate compliance/necessary action a copy of judgment/order dated **01.03.2023** passed in the above case by **Hon'ble Ms. Justice Swarana Kanta Sharma** of this Court. The Hon'ble Court has further directed to ensure circulation of this judgment among all the judicial officers in your Courts for sensitization of judicial officers on this issue.

Necessary directions are contained in the enclosed copy of order.

Yours faithfully,

10/03/2023

OJ (Crl.)
for Registrar General

Encl : Copy of order dated **01.03.2023**
memo of parties

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL.) NO. _____/2023

IN THE MATTER OF:

SANJAY KUMAR SAIN
(DCP, Delhi Police) ..PETITIONER

VERSUS

STATE OF NCT OF DELHI ..RESPONDENT

MEMO OF PARTIES

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482, CR.P.C. FOR QUASHING AND SEETING ASIDE OF IMPUGNED ORDERS DATED 13.10.2022, 24.11.2022 AND 07.12.2022 PASSED BY THE COURT OF SH. PAWAN KUMAR MATTO, LD. ASJ, NORTH EAST, KARKARDOOMA COURTS, DELHI IN SESSIONS CASE NO. 298/2019 TITLED – "STATE vs SUNIL @ KALLU & ORS.

..Petitioner

Sanjay Kumar Sain,
S/o Bodi lal Sain,
R/o D-2, 138; Kaka
Nagar, Near Delhi High
Court

Versus

State of NCT of Delhi
Through SHO PS, Khajuri Khas
The Standing Counsel,
Mr. Kapil Sharma,

..Respondent

Mob: 9891919168

Drawn & Filed By:

Prabhav Ralli & Arun Kanwa
Advocates
R-62, Greater Kailash – 1,
New Delhi - 110048
Ph – 9999249666

New Delhi Date:
09.01.2023

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 11.01.2023
Pronounced on: 01.03.2023

%

\+ **W.P.(CRL) 76/2023**

SANJAY KUMAR SAIN ..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate with Mr. Prabhav Ralli and Mr. Arun Kanwa, Advocates

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms. Rupali Bandhopadhya, ASC for State with Mr. Akshay Kumar and Mr. Abhijeet Kumar, Advocates

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present Writ Petition under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 ("Cr.P.C."), the petitioner, who is currently posted as Deputy Commissioner of Police, North East Delhi, seeks quashing and setting aside of orders dated 13.10.2022, 24.11.2022 and 07.12.2022, passed by learned Additional Sessions Judge, North East, Karkardooma Courts, Delhi, in Sessions Case No. 298/2019 titled "*State Vs. Sunil @*

Kallu & Ors.", to the extent of observations and remarks made against the petitioner herein and also to recall and cancel the Bailable Warrants issued against the petitioner *vide* order dated 07.12.2022.

FACTUAL MATRIX

2. The facts and circumstances, leading to the filing of present petition, are that an FIR bearing no. 246/2019 was registered under Sections 22/29 of NDPS Act, 1985, at Police Station Khajuri Khas, wherein 5 accused persons were arrested. Chargesheet under Section 173(2) of Cr.P.C. was filed on 14.08.2019, and a supplementary report was filed on 30.10.2019 to bring on record the FSL report, which confirmed the seized contraband to be 'Tramadol'. By way of another supplementary chargesheet filed on 15.09.2021, the FSL report with respect to mobile phones and SIM cards of accused persons was placed on record. During the investigation, it was felt necessary by the Investigating Agency to take voice samples of the two accused persons namely Ankit Kumar and Rupesh Kumar Gupta. Thereafter, third supplementary chargesheet dated 15.01.2022 was filed before the learned Trial Court whereby detailed report of contraband seized in the present case was placed before the learned Trial Court, and the Court was also informed that voice samples of accused would be taken on 25.01.2022. Voice samples of the accused persons were then sent to FSL, Rohini on 20.05.2022 for examination. The learned Trial Court, on 26.07.2022, directed the petitioner herein, for the first time, to make efforts to obtain the FSL Report of voice samples. On 29.07.2022, the petitioner in compliance of the said order of the learned Trial Court

the result, however, the same was not ready, and thus, on 23.11.2022, the learned Trial Court was informed regarding the same.

5. On 24.11.2022, *vide* the second order impugned before this Court, the learned Trial court again passed remarks against the petitioner, wherein it was again mentioned that IO, SHO and the DCP, North East (i.e. petitioner) are negligent persons. Vide this order itself, the learned Trial Court was also pleased to summon in person, the IO/ACP and DCP North-East. The relevant portion of order dated 24.11.2022 is reproduced as under:

> "...Since, this case is registered way back in the year 2019 and two accused in this case, are behind bars since 2019, but till date, the report of FSL regarding voice samples of the accused Rupesh Kumar Gupta and Ankit Kumar has not been filed. **It appears to this court that the IO, SHO and the DCP, North-East are negligent persons**."
>
> (Emphasis supplied)

6. The petitioner on 29.11.2022, got issued through the Additional DCP concerned, another letter to the FSL informing them of the Court order dated 24.11.2022 and requested them to expedite the preparation of the report. On 02.12.2022, a special messenger was again sent to Director, FSL and FSL had informed that the report of the voice samples will be ready by 28.03.2023. On 06.12.2022, the response of the Director, FSL dated 02.12.2022 was placed before the learned Trial Court *vide* status report dated 06.12.2022 which was sent by the petitioner herein. The petitioner had also sought exemption from

issued a letter, apprising the Director, FSL, Rohini, regarding order passed by the Court and requested the Director concerned to prepare the report on priority basis. On 04.10.2022, a status report was filed and these facts were placed before the learned Trial Court.

3. On 13.10.2022, *vide* the first order impugned before this Court, the learned Trial Court made certain remarks against the petitioner as well as the IO, SHO and ACP concerned by using terms "negligent" and "insensitive". The relevant portion of order dated 13.10.2022 is reproduced as under:

> "The matter is fixed for consideration on charge and also for filing of the report of FSL regarding voice sample of accused Ankit and Rupesh, which is still pending, so, the DCP, North-East was directed to make sincere efforts to obtain the report of FLS. Copy of the last order was sent to the DCP, North East for compliance. The DCP has written a letter stating therein that DO letter was written on dated 29.07.2022, but, as this case was registered way back in the year 2019, **it appears to this court that the IO/SHO/ACP/DCP are negligent persons**, as, they are not making sincere efforts for obtaining the report of the FSL expeditiously. Since, accused Sunil @ Kallu and Vicky @ Harminder are in judicial custody and **these police officials are insensitive enough**..."
>
> (Emphasis supplied)

4. Thereafter, on 19.10.2022, again a communication was sent by the petitioner to the Director, FSL, Rohini through Additional DCP concerned regarding filing the FSL report of voice samples. On 16.11.2022, a special messenger was also sent to FSL, Rohini to collect

personal appearance on 07.12.2022 due to MCD election duty and some urgent law and order situation.

7. On 07.12.2022, *vide* third order impugned before this Court, the learned Trial Court again passed certain remarks against the petitioner and other police officers blaming them for the delay in filing of FSL report and turned down the request for exemption from personal appearance of the petitioner and ordered issuance of bailable warrants against the petitioner. The relevant portion of order dated 07.12.2022 is reproduced as under:

> "...Since, the DCP(North-East) has failed to appear, so, request of exemption from personal appearance is turned down. **So, DCP(North-East) is called upon through bailable warrants in the sum of Rs. 5,000/- for the next date of hearing. Bailable warrants are ordered to be executed through Commissioner of Police (Delhi).**
>
> ****
>
> ...Since, the request made by this court to the Commissioner of Police (Delhi) is not considered and as the Commissioner of Police (Delhi) also failed to do anything fruitful for expediting the result of the FSL. As today this court has received a letter from DCP (North-East), which reveals that report of FSL would be ready on 23.03.2023, since, as two of the accused persons, namely, Sunil @ Kallu and Vicky @ Harminder were arrested on dated 17.05.2019 and since then they are behind bars and this case is relating to the commercial quantity of the contraband and in view of negligent conduct and lackadaisical approach of the Police Officials, including the Senior Police Officers, both of these accused are behind bars for a considerable period that too without framing of charges against them as the prosecution has failed to file report of FSL and total weight of the contraband alleged to have been recovered from the

> accused. So, in the given circumstances, when the top cop of Delhi Police failed to consider the request of this court, so, in the given circumstances, Secretary (Home), Government of India, New Delhi is requested to make sincere efforts, so, that the report of FSL may be filed in this court on or before the next date of hearing and the total weight of contraband is brought on the record..."
>
> (Emphasis supplied)

8. The petitioner, aggrieved by the aforesaid, seeks indulgence of this Court for setting aside the impugned orders to the extent of remarks passed and the Bailable Warrants issued against him.

SUBMISSIONS AT THE BAR

9. Mr. Vikas Pahwa, learned senior counsel for the petitioner seeks deletion of the remarks and terms, from the first impugned order as mentioned in para 3 above and from the second impugned order as mentioned in para 5 above, and seeks cancellation of bailable warrants issued against the petitioner as mentioned in para 7 above. It is stated that petitioner herein is a highly respected IPS officer currently posted as the Deputy Commissioner of Police, North-East Delhi. As stated, the petitioner has had an impeccable service record and has also been conferred with various awards and accolades for his service, including the "President Police Medal for Gallantry" Award.

10. It is argued by Mr. Pahwa that the impugned observations/ remarks relate to purported delay in a report of the Forensic Science Laboratory, Rohini with respect to voice samples in a case registered under the NDPS Act, 1985 and the learned Trial Court failed to

appreciate that delay, if any, was on the part of the FSL and not the police or the petitioner herein and that the FSL is not under the control of the police. It is stated that petitioner had complied with all directions passed by the learned Trial Court, and the police department had duly followed up with the Director, FSL, by way of written communications which were also placed before the learned Trial Court. It is also argued that the observations of learned Trial Court that it was not being informed about the total weight of seized contraband are also misplaced because the supplementary chargesheet filed on 15.01.2022 had complete details to this effect. It is further submitted that most unfortunately, the learned Trial Court has made sweeping remarks against the petitioner on multiple occasions and also taken coercive steps by way of issuing bailable warrants, thereby impeaching the credibility of a decorated police officer.

11. Learned senior counsel for petitioner also contends that aforesaid actions of the learned Trial Court, in the given facts and circumstances, are totally impermissible in law, and reliance has been placed upon the following case laws: (i) ***Dr. Dilip Kumar Deka and Anr. v. State of Assam and Anr.,*** *(1996) 6 SCC 234*, (ii) ***Ajit Kumar v. State (NCT of Delhi)*** *2022 SCC OnLine Del 3945*, (iii) ***Rakesh Chand v. State*** *2015 SCC OnLine Del 14193.*

12. Ms. Rupali Bandhopadhya, learned ASC for the State, submits that the learned Trial Court appears to have overstepped its jurisdiction and passed remarks and directions which were unwarranted in the given set of facts.

ANALYSIS AND FINDINGS

13. At the outset, before considering the facts of present case, it will be appropriate to refer to the legal precedents and guiding principles in such cases, wherein relief such as deletion of remarks passed by a Court against police officers and investigating agencies was sought for.

14. **Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases"** pertains to criticism on the conduct of Police and other officers and warns against such an action by the Courts. The same is reproduced as under:

> "**6. Criticism on the conduct of Police and other officers**—It is undesirable for Courts to make remarks censuring the action of police officers unless such remarks are strictly relevant of the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of ill-usage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and everything against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. **Whenever a Magistrate finds it**

> **necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary's circular Letter No. 920-J-36/14753, dated the 15th April, 1936."**
>
> (Emphasis supplied)

15. The Hon'ble Apex Court in ***Dr. Dilip Kumar Deka and Anr. v. State of Assam and Anr.*** *(1996) 6 SCC 234*, while dealing with the tests to be applied for deciding the question of expunction of disparaging remarks against authorities, observed as under:

> "6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct comes in for consideration before a court of law in cases to be decided by it were succinctly laid down by this Court in State of U.P. v. Mohd. Naim [AIR 1964 SC 703 : (1964) 1 Cri LJ 549 : (1964) 2 SCR 363]. Those tests are:
> (a) Whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
> (b) **Whether there is evidence on record bearing on that conduct justifying the remarks**; and
> (c) **Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.**
>
> ***
>
> 7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast

> a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice."

16. In ***State of West Bengal v. Mir Mohammad Omar & Ors*** *(2000) 8 SCC 382*, the Hon'ble Apex Court had directed the Courts to ordinarily desist from castigating the investigation even while ordering acquittal. The relevant observations read as under:

> "41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely fool proof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavory criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely

necessary in a particular case, and that too by keeping in mind the broad realities indicated above."

17. Stressing upon the need and importance of exercising judicial restraint and discipline, the Hon'ble Supreme Court in ***A.M. Mathur v. Pramod Kumar Gupta*** *(1990) 2 SCC 533*, had observed as under:

> "12. It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said:
>
> > "First and foremost, humility and an understanding of the range of the problems and (one's) own inadequacy in dealing with them, disinterestedness ... and allegiance to nothing except the effort to find (that) pass through precedent, through policy, through history, through (one's) own gifts of insights to the best judgment that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law."
>
> 13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process."

18. A co-ordinate Bench of this Court in ***Rakesh Chand v. State*** *2015 SCC OnLine Del 14193*, had expressed its views regarding restraint to be observed by the judges while passing comments on the conduct of officers/authorities. The relevant observations are as under:

> "2. While dealing with the task of administering justice, a Judge, no doubt has to be acting judicially and giving expression to his views but he ought to be circumspect while commenting on the conduct of some. The line of discretion is not to be overstepped. The calm and sangfroid of a Judge should be reflected in every judgment, every order; rather every part of any judgment or order. The immunity which is enjoyed by a judicial officer carries with it the duty of circumspection. A Judge ought to know that any statement against any authority of the Government or any organ of the Government or any person incharge of investigation or discharging executive functions can lacerate, slash and mutilate his reputation into tatters and cause irreparable harm. It may prejudicially affect the career of such persons. What is required to be taken care of is that nobody ought to be condemned without being heard. The prejudicial effect on somebody against whom a stricture is passed cannot be assessed only in terms of the immediate damage to him. It has the potential of eroding the confidence of public on such person or institution. A judge must be wary of such cascading effect of any statement/stricture made by him while delivering judgment."

19. After hearing the submissions made at Bar and having perused the records, this Court notes that the present case i.e. FIR bearing no. 246/2019 registered at P.S. Khajuri Khas, under Sections 22/29 of NDPS Act, 1985, pertains to the year 2019, however, charges against

accused are in judicial custody. After collecting the voice samples of the accused persons, the same were sent to FSL, Rohini on 20.05.2022, and the learned Trial Court was also aware of the same as the said fact has been recorded in its order dated 21.05.2022.

20.2. On 26.07.2022, the learned Trial Court had for the first time, instructed the petitioner to make sincere efforts to obtain FSL report of voice samples. In compliance of this as well as subsequent orders passed by learned Trial Court, the petitioner had got letters issued to the Director, FSL requesting expeditious preparation of FSL report. Even special messengers were sent to FSL, Rohini for the said purpose. The learned Trial Court was also informed about the tentative date for filing of FSL report as per the communication received from Director, FSL.

20.3. Having said that, the learned Trial Court passed remarks against the present petitioner as well as the IO, SHO and ACP in the orders impugned before this Court considering non-filing of the FSL report of voice samples to be negligence attributable to the petitioner herein. It is important to note here that **Forensic Science Laboratory, located at Rohini, New Delhi**, is an independent governmental agency which is not under the direct control of the present petitioner or Delhi Police. As per records, FSL, Delhi was approved during 8th Five Year Plan (1992-97) in order to address the ever-increasing forensic needs of the Delhi Police and was inaugurated on 18.02.1995. Though, initially the administrative control of FSL, Delhi rested with the Delhi Police, the same was transferred to Home Department, Government of NCT of Delhi, on 21.12.1995 with Principal Secretary (Home) as its

the 05 accused persons have not been framed till date. A perusal of the impugned orders reveal that the dissatisfaction of the learned Trial Court was premised on the failure of prosecution to file the FSL report of voice samples of 02 accused persons, for which the IO, SHO, ACP, and DCP North East (i.e. petitioner herein) were termed as negligent and insensitive persons. Secondly, the impugned orders also note the displeasure of learned Trial Court on the inability of a police officer to inform the Court about the exact weight of the contraband seized from the accused persons. In view of this situation, the petitioner was directed to personally appear on the next date of hearing and on his non-appearance on the said date, Bailable Warrants were issued against him.

20. The remarks passed against the petitioner in the impugned orders, primarily relate to his "negligence" and "insensitivity" in not ensuring that the FSL report of voice samples was filed on time, as directed by the learned Trial Court.

20.1. In the present case, the record reveals that by way of supplementary chargesheet filed on 15.01.2022, the learned Trial Court was informed that the voice samples of the accused persons were to be collected by the concerned official of FSL on 25.01.2022 and that FSL report in respect of voice samples would be filed through another supplementary chargesheet as per law. The learned Trial Court was, therefore, aware that another supplementary chargesheet was yet to be received in this case and permission to take voice samples and send them to FSL would have been taken from the court itself since the

Administrative Secretary. FSL, Delhi, *vide* notification dated 17.04.2018, was also notified as Examiner of Electronic Evidence under Section 79A of the Information Technology Act, 2000 by Ministry of Electronics and Information Technology, Government of India.

20.4. 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 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.

20.5. 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.

20.6. Rather, in such circumstances, when the accused persons had been in judicial custody for a long period of time, the learned Trial Court, in the very first place, could have itself requested the FSL, Rohini to expedite the preparation of report of voice samples. In fact, after an application seeking such a direction was moved by the Investigating Officer on 07.12.2022, the learned Trial Court issued a direction to Director, FSL requesting to place the relevant FSL reports before the Court expeditiously. The said order is reproduced as under:

> "...Matter was adjourned for the pre lunch session for 12.01.2023 for filing the report of FSL of voice samples, for filing the exact weight of the contraband and also for consideration on charge.
>
> ACP has filed an application for seeking direction to Director, FSL, Rohini, Delhi for early result of the exhibits. Accordingly, Director, FSL, Rohini, Delhi is directed to expedite the result of the FSL (FSL.Ref.SFSL(DLH)/4851/CHEM/1566/19Dated

20.05.2019) be filed in this court on or before the next date of hearing i.e.12.01.2023.

In the above said terms, the application stands disposed of."

20.7. 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.

20.8. In fact, in the present case itself, previously, the learned Trial Court *vide* order dated 20.09.2019 on a similar application filed by prosecution had directed FSL, Rohini to expedite the preparation of FSL report of sample of the seized contraband as well as of the mobile phones of accused persons. Thereafter, in compliance of the directions of the Court, the FSL, Rohini was pleased to prepare the said reports within a short period of time and the same were forwarded to the police for doing the needful. The learned Trial Court, could have perused the orders of its own Court, passed by predecessor Judge, to get a fair idea as to what best could have been done to get the FSL of voice samples prepared on a priority basis.

20.9. 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.

21. The second reason for the displeasure of learned Trial Court was the fact that the Court was not being apprised by the investigating agencies as to what was the total weight of the contraband seized in the present matter. In this regard, it was argued before this Court that all the details regarding the contraband had already been filed before the learned Trial Court on 15.01.2022 by way of supplementary chargesheet. This Court has perused the said supplementary chargesheet, which includes the weight of contraband in each capsule and total weight of contraband in all the capsules seized from all the accused persons.

21.1. As far as recovery from accused Ankit is concerned, a total of 07 cartons were recovered from him and the supplementary chargesheet mentions the total weight of contraband in each carton as 4.73 kg, 11.28 kg, 11.28 kg, 4.73 kg, 4.73 kg, 1.57 kg and 1.51 kg. A mere addition of these amounts would reveal the total weight of contraband seized from accused Ankit. Furthermore, as far as recovery of 39,000 capsules from accused Sunil and Vicky is concerned, the weight of contraband in each capsule has been mentioned in the supplementary chargesheet as 19500 x 0.31 gm and 19500 x 0.31 gm, but the total weight by way of multiplication has not been specifically mentioned. However, the same was informed to the learned Trial Court, to be 12.09 kg (approx.) by the learned APP for State which is recorded in the order dated 27.01.2022. The Trial Court in its order dated 08.04.2022 further records that certain clarifications with respect to weight of contraband and batch numbers were sought and reports qua the same had already been filed.

the learned Trial Court. Nonetheless, this Court is not venturing much into this direction, as the remarks against petitioner which are sought to be expunged principally relate to delay in filing of FSL of voice samples.

22. Another relief sought by way of present petition is recalling or cancellation of the Bailable Warrants issued by the learned Trial Court to secure the presence of petitioner, as mentioned in para 7 above.

22.1. In this regard, it is noted that *vide* order dated 24.11.2022, the petitioner had been called upon to appear in person on 07.12.2022 by learned Trial Court, essentially on the ground that he was negligent in not ensuring that FSL report of voice samples of accused persons was placed on record, and further because the police officer who had appeared before the Trial Court was not able to inform the Court concerned of the total weight of the contraband recovered from accused.

22.2. *Firstly*, as noted in the preceding discussion, petitioner does not exercise authority over FSL, Delhi so as to direct the Director, FSL to prepare the report expeditiously and place the same before the Court on a fixed date. By way of letter dated 06.12.2022, petitioner had informed the learned Trial Court that as per the communication received from FSL, Rohini, the FSL report of voice samples of accused would be made available on 28.03.2023 for collection. *Secondly*, considering the details mentioned in the supplementary chargesheet filed on 15.01.2022 and various observations recorded in the orders dated 27.01.2022, 08.04.2022 and 10.06.2022, the learned Trial Court had already been

However, this Court is compelled to take note of the fact that in the order dated 21.05.2022 of learned Trial Court, it has been recorded that the Investigating Officer had stated that he would be filing a report clarifying the exact quantity of the contraband found in the capsules which were seized from accused Sunil and Vicky. Thereafter, the order dated 10.06.2022 records the submission of learned APP for State where he had informed the Court about the total weight of the contraband in the capsules, and even the learned Trial Court, while dismissing the bail application of accused Vicky on 10.06.2022 had observed that recovery from him was of 39,000 capsules weighing around 12.9 kg. Thus, undoubtedly, the Court was aware of the total weight of the contraband seized from these two accused persons also.

21.2. Therefore, the observations of learned Trial Court in this respect seem to be misplaced and it is not clear as to when a detailed report indicating the weight of contraband seized had already been placed before the Court and when it was also made aware about the total weights of the contraband on several occasions, as observed in preceding paras, what more the Investigating Officer was supposed to inform to the Court. The learned Trial Court mentions in order dated 07.12.2022 that the order on charge was being delayed due to non-availability of the FSL report of voice samples. However, it is rather unclear from the orders of learned Trial Court as to how the FSL report regarding the voice samples was being considered as a hurdle in hearing arguments on charge or passing order on charge once the FSL report regarding the contraband recovered had already been filed before

made aware of the weight of the contraband seized in the present matter. Furthermore, an exemption application was moved on behalf of the petitioner on 07.12.2022 on the ground that he was engaged in duties relating to Elections of Municipal Corporation of Delhi and some other urgent law and order situation. However, despite this, the learned Trial Court did not allow the exemption application and proceeded to take coercive steps and issue Bailable Warrants against the petitioner herein. In the opinion of this Court, considering the peculiar facts and circumstances of the case, this action of the learned Trial Court was severe.

23. Recently, this Bench on 22.11.2022 in ***Ajit Kumar v. State (NCT of Delhi)*** *2022 SCC OnLine Del 3945*, while dealing with a similar case, had issued directions for exercise of judicial restraint and observed that judicial officers should refrain from passing denigrating remarks against police officials. A direction was also issued for the circulation of the copy of judgment for the benefit of all Judicial Officers. Some of the relevant portion of said judgment is reproduced as under:

> "...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 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.

> 39. This Court makes it clear once again that this order in no way undermines the majesty of the Court or the fact that the judicial directions need to be obeyed by the police officials concerned and the power of the courts to pass orders pointing out their disobedience or point out any fault in investigation, etc, cannot be questioned, however, in this regard, Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" needs to be kept in mind and also the judicial precedents of the Hon'ble Apex Court and the High Court have to be kept in mind as guiding force while passing such remarks which amount to strictures.
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> 41. Judgments and orders passed by the courts are often permanent in nature, so is at times the stigma attached to a person suffered by virtue of an uncalled for remark unwarranted in the facts and circumstances of a particular case. As adjudicatory force of the country, judicial restraint as warranted by law and judicial proceedings is one of the qualities of a judicial officer..."

24. Though the aforesaid judgment passed by this Bench was circulated by learned Registrar General of this Court on 25.11.2022 *vide* letter bearing no. 46847/Crl. in all the District Courts of Delhi, it appears that the learned Trial Court has failed to take note of the same. However, this Court, after perusing the entire case file, does believe that the anxiety of the Court was not wholly iniquitous, in view of the fact that though the incident in question relates to the year 2019 and two of the accused persons are still in judicial custody, even the investigation is not entirely complete and charges have not been framed till date. Further, when the petitioner on 07.12.2022 had placed a letter on record seeking exemption from his personal appearance before the

Trial Court, he could have undertaken to make himself available before the Court on some other day, considering the delay in the present trial and to dispel the impression of Trial Court that it was due to the police that FSL report was getting delayed. As held by Hon'ble Apex Court in catena of judgments, speedy trial is an essence of criminal justice system and the same was also in the mind of learned Trial Court while dealing with the case at hand. But for the reasons stated in the preceding discussion, this Court is of the opinion that when the remarks passed against the petitioner are weighed against the inaction attributed to him on the scales of justice, the balance lies in favour of petitioner in the given facts of the case.

25. Although the Courts must ensure that trials are conducted swiftly, fairly, and impartially, they must take into account the ground realities and position of law. Whenever the judicial officers are inclined to use harsh language against the investigating authorities and police officers on their professional capabilities and devotion towards their duty, more control and caution must be exercised, since passing such comments may impair a person's confidence, in addition to having a negative impact on his work and reputation. The loss of reputation suffered by an officer may not get restored even if the remarks are expunged by a higher court. Therefore, a thin wall that exists between the adjudicatory liberty to point out the flaws in an investigation or on part of authorities and the obligation to exhibit judicial restraint must be kept in mind and perspective.

26. Judicial utterances in the form of strictures are disapproval and dissent in certain cases. At times, the strictures stigmatize the concerned person without conviction. A recipient of stricture will have no option other than to seek expunction of stricture by way of either a judicial review or under the writ jurisdiction. Though no restriction can be imposed upon judicial functioning except guidelines on judicial strictures and judicial precedents, since doing so will be against the independence of judiciary, however, a recipient of judicial stricture also cannot remain devoid of any remedies of redressal. It is the self regulation amongst the judges that maintains the institutional integrity of the judiciary. Undoubtedly, judicial utterances on many occasions have the power to meaningfully bring about social and procedural changes for the welfare and betterment of the system. The judicial officers, however, have to note the difference between judicial findings and passing of strictures. While there can be no doubt about the importance of judicial free speech, it being the hallmark of a free and fair judiciar, judicial self-restraint is an obligation that judiciary recognizes as created by and for themselves. The strictures have been passed against an officer, as in the present case a police officer who has been visited with judicial displeasure for want of carrying out burden of good governance of justice by ensuring speedy trial to the accused persons in judicial custody. The judicial officer had to remain conscious of the fact that passion for the same solely should not have guided him to pass such strictures to express judicial discontent more so since the delay in filing FSL was beyond his control.

27. This Court is also of the view that in this case, the strictures may be negligent but are not mala fide in nature. It is not to be forgotten by courts that though the remedy of expunction of strictures is available to recipient of strictures, many a times, the strictures live on not only in public memory but also the memory of the recipient itself. Social memories tend to stigmatize the recipient, though the person passing strictures will enjoy judicial immunity due to his adjudicatory freedom of expression. In the present case, the learned Trial Court displeased due to delay in trial, had passed the orders impugned before this Court without realizing that the cause behind the delay was not the recipient of the strictures herein but the reasons beyond his control.

28. The Indian judiciary has always followed the self-imposed judicial civility codes and have, through the judgments of Hon'ble Apex Court as well as High Courts, flagged the issue of unwarranted judicial strictures which stigmatize and at times even penalize the recipient of strictures.

29. This Court should not be held to be trying to bring down the majesty and power of the Court, as also observed by this Court in the case of ***Ajit Kumar v. State (NCT) of Delhi*** *(supra)*. This Court remains conscious of the fact that the judicial words, utterances, decisions help, ensure a society which follows rule of law. However, at times, unwarranted judicial utterances can wound and at times adversely affect or destroy the career and confidence of the recipient of strictures.

30. It is also made clear that by way of this Judgment, this Court is not holding or laying down, as earlier expressed in case of ***Ajit Kumar v. State (NCT) of Delhi*** *(supra),* that the courts are powerless to point out disobedience of orders passed by the courts, but the judicial utterances or orders passed regarding the conduct of police officers have to be inconsonance with the misconduct, if any, after carefully analyzing that such misconduct is, solely and without any doubt, attributable to them. Nevertheless, Section 6 of Chapter 1, Part H ('The Judgment') of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" provides guidance to the Trial Courts as to what can be the appropriate procedure in cases where a Court is dissatisfied with the manner in which investigation has been done by concerned authorities and agencies. If the circumstances so warrant, the Courts can also take recourse to the Delhi Police Act and relevant provisions under appropriate laws and can issue notice and initiate appropriate action. The Courts are not powerless to indicate any lapse or omission on part of investigating agencies, or any disobedience of the directions of the Court. The courts have to take recourse to the judicial precedents and the High Court Rules instead of taking into their own hands the duty of conducting enquiries, etc., and have to leave the same to the parent department and disciplinary authority of the police officers concerned.

31. As also earlier *directed* in ***Ajit Kumar v. State (NCT of Delhi)*** *(supra),* this Court once again, by way of abundant caution, directs all the learned Judicial Officers to exercise utmost restraint and judicial

discipline while deciding the cases before them and refrain from judging the credibility of police officers and passing scathing and disparaging remarks against them, when the same are not required for the adjudication of matters before them.

32. 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.

33. Accordingly, the present petition stands allowed in above terms.

34. 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.

SWARANA KANTA SHARMA, J

MARCH 1, 2023/zp