

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 (Civil) No. 943/2021

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

[ONLY WRIT PETITION (CRL) NO. 391 OF 2021 IS LISTED AGAINST THIS ITEM]

(MR. SANJAY HEGDE, SR. ADV. WITH MR. ANAS TANWAR, ADV.)

WITH

W.P.(Cr1.) No. 391/2021 (X)

(FOR ADMISSION and IA No.118374/2021-EX-PARTE AD-INTERIM RELIEF and IA No.118376/2021-EXEMPTION FROM FILING O.T. and IA No.118377/2021-EXEMPTION FROM FILING AFFIDAVIT)

Date : 06-02-2023 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s)

Mr. Huzefa Ahmadi, Sr. Adv.  
Ms. Shahrukh Alam, Adv.  
Ms. Warisha Farasat, Adv.  
Mr. Talha Abdul Rahman, AOR  
Mr. Mohd. Shaz Khan, Adv.  
Ms. Gayatri Dahiya, Adv.  
Mr. Bilal Anwar Khan, Adv.

Mr. Ashwani Kumar Dubey, AOR

For Respondent(s)

Mr. K.M. Nataraj, A.S.G.  
Ms. Garima Prashad, Sr. A.A.G.  
Ms. Ruchira Goel, AOR  
Ms. Indira Bhakar, Adv.  
Mr. Adit Jayeshbhai Shah, Adv.

Mr. Tushar Mehta, Solicitor General  
Mr. K M Nataraj, A.S.G.  
Mr. Rajat Nair, Adv.  
Mr. Kanu Agarawal, Adv.

Mr. Mayank Pandey, Adv.  
Mr. Sanjay Kumar Tyagi, Adv.  
Mr. Varun Chugh, Adv.  
Mr. Amit Sharma, Adv.  
Mr. Nakul Chengappa K.K., Adv.  
Ms. Akriti A. Manubarwala, Adv.  
Mr. Rajan Kumar Chourasia, Adv.  
Mr. Arvind Kumar Sharma, AOR

Mr. Amit Sharma, AOR  
Mr. Dipesh Sinha, Adv.  
Ms. Pallavi Barua, Adv.  
Ms. Sakshi Upadhyaya, Adv.  
Ms. Aparna Singh, Adv.

Mr. Nishe Rajen Shonker, AOR  
Mrs. Anu K Joy, Adv.  
Mr. Alim Anvar, Adv.

Ms. K. Enatoli Sema, AOR  
Ms. Limayinla Jamir, Adv.  
Mr. Amit Kumar Singh, Adv.  
Ms. Chubalemla Chang, Adv.  
Mr. Prang Newmai, Adv.

Mr. Upendra Pratap Singh, AOR

Mr. Shovan Mishra, AOR  
Ms. Bipasa Tripathy, Adv.

Mr. Abhimanyu Tewari, AOR  
Ms. Eliza Bar, Adv.

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

W.P.(Cr1.) No. 391/2021

Heard learned senior counsel appearing for the  
petitioner and the learned Additional Solicitor General.

We have also perused the additional affidavit filed on  
behalf of the State. We note paragraph 8:

"8. It is stated that the FIR of the cognizable offences should have been registered after receipt of the Petitioner written Letter. However, the same was not done and punitive action is being taken in that regard, and now FIR No. 36/2023 dt. 15.01.2023 has been registered at PS Sector 39 Noida. The

investigation of the case was transferred to the Crime Branch Gautam Budh Nagar which constituted an SIT headed by the ACP-1 Noida. The current progress of the investigation is recorded in 12 CDs, the originals of which are being produced before this Hon'ble Court."

In tune with the same, learned Additional Solicitor General does fairly acknowledge that an FIR (36/2023) has been registered on 15.01.2023.

We do notice with some distress that it comes late in the day noticing that the information which forms foundation for the FIR was furnished as early as on 06.07.2021.

The stand taken by the respondent-State in this matter appears to be that what is involved is not a hate crime but a part of the series of crimes committed by a Gang which is described as 'Pechkas Gang' which employ screwdrivers. It is submitted by the learned Additional Solicitor General that the first of the FIRs in this connection was lodged on 26.06.2021. The crime in the instant case is of 04.07.2021. It is pointed out that subsequently the same Gang has committed similar offences in September and October, 2021.

We have already noticed from paragraph 8 that punitive action is being taken. Still further, as is clear from the affidavit, the matter is receiving the attention of Special Investigation Team headed by ACP-I, NOIDA.

In such circumstances, we deem it appropriate to pass the following order:

The respondent-State will produce the FIRs which are mentioned in paragraph 6 of the additional affidavit. The

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affidavit will indicate as to when the persons involved in Case No. 595/2021 which is apparently the FIR lodged with reference to the incident which took place on 26.06.2021 came to be apprehended and as to if they were bailed out. The affidavit also will indicate the result of the investigation which has been carried out by the SIT referred to in paragraph 8 of the additional affidavit.

Such an affidavit shall be filed within a period of two weeks from today.

List the matter for further consideration on 03<sup>rd</sup> March, 2023.

(NIDHI AHUJA)  
AR-cum-PS

(RENU KAPOOR)  
ASSISTANT REGISTRAR