

File No. 2287/4/4/2020 – AD

23-06-2022

Present proceeding was initiated on receipt of information received from District Magistrate and SP, Begusarai, stating that accused Vikram Kumar and victims was apprehended and were kept in Birpur Police Station campus in connection with Birpur PS Case No.15/20 u/s 363 & 366A IPC. It is also stated that an allegation of accused Vikram Kumar committing suicide inside Police Station campus, S.I. Amar Kumar officer in-charge Birpur Police Station has been suspended and Birpur PS UD Case No. 1/20 has been registered.

Later on an application has also been received from one Sadhna Kumari stating that 4 months ago Vikram Poddar of Dalit community eloped with a girl of upper caste to Delhi, for which an FIR was registered by her family member of kidnapping and rape. It is also stated that Vikram Poddar was arrested by Police of Sangam Vihar Police Station on 21/03/2020 and handed over to Police officials of Birpur Police Station. They were brought to Birpur Police Station on 23/03/2021. It is also stated that her statement was recorded u/s 164 Cr.P.C before Judicial Magistrate and her Medical examination was also held on 24/03/2021 but Vikram Podar was kept in Birpur Police Station and not sent to jail on 24/03/2020. Family members of Vikram Poddar were telephonically informed only in the evening of 24/03/2021 by the Police Officials that he had committed suicide by hanging himself. It is also stated that family member of Vikram Podar came and saw his dead body hanging with the ceiling fan and legs touching the floor as such they apprehends that he had been treated and subjected to inhumane treatment. She was prayed for CBI and Judicial Enquiry against the Police Station.

Earlier, copy of the case dairy and Station Diary entry had been made available but it was not in continuity. Apart from that copy of Post Mortem Report, Magisterial Enquiry Report, Seizure List, Inquest Report and CD of Post Mortem had also been made available.

After receipt of above document and other relevant papers this proceeding was referred to Investigation Division of the State Commission for a detail enquiry, vide order dated 10/02/2022 making it clear to them that they are free to call for documents if required and submit a report after giving opportunity to the deceased accused and his family members of deceased. At the same time DSP head quarter Begusarai was directed to make the position clear regarding Forensic Report.

A report of Investigation Division i.e. of Additional Director General of Police and Registrar of BHRC had been received. (Page 240- 245/C).

Report had also been received from S.P. Begusarai, enclosing the report of DSP Headquarter and copy of order passed against the then officer in-charge Birpur S.I. Amar Kumar.

It further appears from the report submitted by the S.P. Begusarai that proposal for prosecution u/s of Juvenile Justice (Care and Prosecution of Child) Act 2015, the then Child Welfare Officer, Birpur SI Vinod Kumar Singh has also been recommended by S.P. Begusarai (page- 246- 258/C). As per report of S.P. the forensic team was called for from FSL Patna, but due to lockdown and prevailing Covid epidemic, team could not physically inspect the place of occurrence nor has any report been submitted by them.

On perusal of the report of Investigation Division it appears that after examining the materials available on record and going through the CCTV footage produced by the police of police Hazat, examining the materials available in the copy of case diary of U/D case no. 1/20 and also giving opportunity to the applicant to produce her case (though the applicant Sadhna Kumari has not appeared, her husband along with a villager had appeared and produced a certificate showing that applicant died during the pendency of application), found the following:-

“Accused Vikram Kumar of Birpur case no.15 of 2020 was arrested by the police brought to the police station, finding him a child in conflict with the law kept in a separate room under supervision of chowkidar 3/2 Gopal Paswan where Vikram Kumar asked the deputed chowkidar to fetch water for him, closed the door of room from inside and hanged himself from the ceiling fan with the help of lungi, which has also been found during the Magisterial Enquiry and Post Mortem Report etc also.

The Investigation Division has further found that final form has been submitted in U/D Case no.1/20 registered in connection with the death of minor Vikram Kumar,

holding that since the girl had left Vikram Kumar and she had gone with her family members, in self repentance he closed the door from inside and committed suicide by hanging, which also appears from Enquiry Report and the Report of Medical Board.

The Investigation Division further found that a departmental proceeding no.28/20 was initiated against, the then officer in-charge Birpur S.I. Amar Kumar with respect to suicide committed inside Police Lockup, Amar Kumar was found guilty and punishment was awarded to him police DSP Headquarter had also recommended for prosecution of Child Welfare Officer Birpur S.I. Vinay Kumar Singh u/s 75 of Juvenile Justice (Care and Protection of Children) Act 2015, herein after for the convenience to be referred as JJ Act 2015 but report regarding action taken report has not been received. The Investigation Division has also pointed that as to what action has been taken against chowkidar 3/2 Gopal Paswan, does not find place in the report of S.P. as had he informed anybody else before leaving the duty, to fetch water, occurrence could have been averted, as such negligence on the part of Deputed chowkidar 3/2 cannot be ruled out in allowing mishappening of commission of suicide by child in conflict with law Vikram kumar.

From perusal of report submitted by S.P. Begusarai it appears that the dead body of deceased Vikram Kumar was examined by FSL team through video call as it was covid pandemic time and there was lock down but no physical inspection has been done nor any report had been submitted by FSL team on the basis of video call inspection through virtual mode.”

I, myself perused the materials available on the record and on close scrutiny of the copy of case diary of Birpur P.S. Case No. 15/2020 and copy of SDE of Birpur P.S. available on the record it appears that child in conflict with law Vikram Kumar was arrested from Delhi on 21/03/2021 and he was brought to Birpur Police Station at 8 PM on 23/03/2021. Finding him minor he was kept in a separate room under the supervision of chowkidar 6/3 Gopal Paswan. However there is nothing available in record to show nor there is any mention in the station diary of Birpur Police Station that he was placed under the supervision of Child Welfare Police Officer of Birpur Police Station on his being brought to Police Station. It further appears that the said victim girl was taken for medical examination and for recording her statement u/s 164 cr.p.c on 24/03/2021 and though her statement could not be recorded due to lockdown but she has been released in favour of her family members on the application given by her in the court, as claimed by police. However, no attempt was taken to produce the said child in conflict with law Vikram Kumar before the Juvenile

Justice Board or its member nor he has been produced before the Doctor for his examination as per the provisions contained in section 54 of Code of Criminal Procedure.

Whereas there are allegations levelled by the applicant Sadhna Kumari stating that the deceased boy was assaulted in the Police Station at the instance of her family members on close scrutiny of the case diary it appears that the victim girl was aged about 18 years as per the F.I.R. There is no evidence that she had forcibly been taken by the deceased Vikram Kumar and even the evidence of enticing the victim girl away by the deceased are not available. At best the evidence is that the victim girl was recovered along with deceased child from Sangam Vihar and she stated in her statement u/s 164 code of criminal procedure recorded after the death of deceased that he enticed her away.

It is admitted case that the deceased Vikram Kumar was below 18 years of age at the time he was apprehended at Delhi on 21/03/2021, he was brought on 23/03/2021 and kept in Birpur Police Station. There is no mention in station diary that his family members were informed. Whereas the girl was taken for medical examination and recording of her statement u/s 164 Code of Criminal Procedure before Judicial Magistrate on 24/03/2021. Though it could not be recorded. Further she had been released on application filed by victim girl as claimed, without the order of court.

In such situation, the mental agony and trauma through which the child in conflict with law Vikram Kumar was passing can, well be understandable and he needs special care and attention at the police station, but he was left to the mercy of chowkidar Gopal Paswan.

It is relevant to mention her that considering the child in conflict with law needs child friendly approach in adjudication of such children and for their rehabilitation, our law makers had enacted Justice (Care and Protection of children) Act 2015. (in short JJ Act 2015)

Section 10 of the J.J. Act 2015 provides:-

“Apprehension of juvenile in conflict with law.—

- (1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the

juvenile was apprehended, to the Board: Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.]

(2) The State Government may make rules consistent with this Act,—

- (i) to provide for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board;
- (ii) to provide the manner in which such juvenile may be sent to an observation home.

Section 11 of the Act provides:-

“Role of person in whose charge child in conflict with law is placed- any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child’s parent and responsible for the child’s maintenance:

Provided that the child shall continue in such person’s charge for the period stated by the Board, notwithstanding that the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such child.

Section 107 of the Act provides:-

“Child Welfare Police Officer and Special Juvenile Police Unit.- (1) in every police station, at least one officer, not below the rank of assistant sub-inspector, with aptitude, appropriate training and orientation may be designated as the child welfare police officer to exclusively deal with children either as victim or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations.

2. To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a Police Officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated under sub-section (1) and two social workers having experience of working in the field of child welfare, of whom one shall be a woman.

3. All police officers of the Special Juvenile Justice Police Units shall be provided special training, especially at induction as child welfare police officer, to enable them to perform their functions more effectively.

4. Special Juvenile Police Unit also includes Railway police dealing with children.

u/s 110 of J.J. Act 2015, the Bihar Juvenile Justice (Care and Protection of Children) Rule 2017 (in short called 2017 Rules) has also been framed.

Rule 8 of Rules provides:-

Rule 8 Pre production actions of Police and other agencies-

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2. when a child alleged to be in conflict with law is apprehended by the police, the police officer concerned shall place the child under the charge of the Special Juvenile Police Unit or the Child Welfare Police Officer, who shall immediately inform:-

i) The parents or guardian of the child that the child has been apprehended along with the address of the Board where the child will be produced and the date and time when the parents or guardian need to be present before the Board.

ii) the Probation Officer concerned, that the child has been apprehended so as to enable him to obtain information regarding social background of the child and other material circumstances likely to be of assistance to the Board for conducting the inquiry; and

iii) A Child Welfare Officer or a Case worker, to accompany the Special Juvenile Police Unit or Child Welfare Police Officer while producing the child before the Board with twenty-four hours of his apprehension.

3. The police officer apprehending a child alleged to be in conflict with law shall:-

i. not send the child to a police lock-up and not delay the child being transferred to the child welfare police officer from the nearest police station. The police officer may under sub-section(2) of section 12 of the Act send the person apprehended to an observation home only for such period till he is produced before the Board i.e. within twenty-four hours of his being apprehended and appropriate orders are obtained as per Rule 9 of these rules;

ii. Not hand-cuff, chain or otherwise fetter a child and shall not use any coercion or force on the child;

iii. inform the child promptly and directly of the charges levelled against him through his parent or guardian and if a First Information Report is registered, copy of the

same shall be made available to the child or copy of the police report shall be given to the parent or guardian;

iv. Provide appropriate medical assistance, assistance of interpreter or a special educator, or any other assistance which the child may require, as the case may be;

v. Not compel the child to confess his guilty and he shall be interviewed only at the special juvenile police unit or at the child friendly premises or at a child friendly corner in the police station which does not give feel of a police station or on being under custodial interrogation. The parent and guardian and in their absence, probation officer or social worker or a lawyer provided by the district legal service authority or any person nominated by the board may be present during the interview of the child by the police.

vi. Not ask the child to sign any statement.

Rule 9 of the Rules provides:-

Production of the child alleged to be in conflict with law before the Board-

(i) When the child alleged to be in conflict with law is apprehended, he shall be produced before the Board within twenty-four hours of his being apprehended, along with a report explaining the reasons for the child being apprehended by the police.

(2) On production of the child before the Board, the Board may pass orders as deemed necessary, including sending the child to an observation home or a place of safety or a fit facility or a fit person.

(3) Where the child produced before the Board is covered under Section 83 of the Act, including a child who has surrendered, the Board may, after due enquiry and being satisfied of the circumstances of the child, transfer the child to the Committee as a child in need of care and protection for necessary action, and or pass appropriate directions for rehabilitation, including orders for safe custody and protection of the child and transfer to a fit facility recognized for the purpose which shall have the capacity to provide appropriate protection, and consider transferring the child out of the district or out of the State to another state for the protection and safety of the child.

(4) Where the child alleged to be in conflict with law has not been apprehended and the information in this regard is forwarded by the police or Special Juvenile Police Unit or Child Welfare Police Officer to the Board, the Board shall require the child to appear before it at the earliest so that measures for rehabilitation, where necessary, can be initiated, though the final report may be filed subsequently.

(5) In case the Board is not sitting, the child alleged to be in conflict with law shall be produced before a single member of the Board under sub-section (2) of section 7 of the Act.

(6) In case the child alleged to be in the conflict with law cannot be produced before the Board or even a single member of the Board due to child being apprehended during odd hours or distance, the child shall be kept by the child Welfare Police Officer in the Observation Home in accordance with Rule 69 D of these rules or in a fit facility and the child shall be produced before the Board thereafter, within twenty-four hours of apprehending the child.

(7) When a child is produced before an individual member of the Board, and an order is obtained, such order shall be ratified by the Board in its next meeting.

Considering the factual matrix of the present proceeding in the background of the above mentioned provision of JJ Act 2015 and 2017 Rules, it is apparent that after apprehending the child in conflict with law Vikram Kumar, provisions of section 10&11 of JJ Act 2015 and Rule 8 and 9 of Bihar Juvenile Justice (care and protection of children) Rules 2017 have not been followed. Neither the child in conflict with law has been put under supervision of child welfare Police officer or Special Juvenile Police Unit, nor information was given to the family members of child in conflict with law of Vikram Kumar, nor any step was taken for his production before Juvenile Justice Board or before it's any member nor in their absence any steps was taken for sending him to observation home. He was also not send to medical officer for his examination after his apprehension. All the above facts are apparent from station diary entry of Birpur Police station.

As discussed above J.J. Act and 2017 rules framed u/s 110 of JJ Act are special act brought with the purpose of providing child friendly atmosphere and also for rehabilitation of child in conflict with law but from discussions made above, it is apparent that the provisions u/s 10, 11, 107 of J.J. Act 2015 and rule 8 & 9 of Bihar Juvenile Justice (care and protection of children) Rule 2017 had not been followed in the present case.

Apart from that it is apparent from case diary that both Vikram Kumar and Victim girl fled to Delhi, no attempt was made by victim girl even to make complain to her neighbor at Sangam Vihar of enticing her away by Vikram Kumar. Only after she was brought to the Police Station, when she came into contact of her family members, she made complain of enticing her away. According to written application filed by her father she was shown about 18 Years old and her statements u/s 164 code of Criminal Procedure Code was recorded only on 28.03.2021 i.e. after five days, after she was released in favour of her family members without any order of the court concerned as claimed by police on the basis of the application, by Police. All the above facts smell something fishy in the approach of Police officials and in other words suggest that the allegation leveled by the applicant Sadhana Kumari does not appear to be baseless.

There is humane angle in this case also involved, the boy was minor, he was kept at police station the victim girl was released in favor of her family member, the above development must have disturbed him and he must be passing through mental agony and trauma. As such he was in need of special attention, but he was left at the mercy of chowkidar not placed before JJB or its members, nor sent to observation home, and being frustrated with above, he might have committed suicide.

It is well settled that it constitutional duty of state to provide safety and security to the prisoner/ accused/ child in conflict with law. Moreover being child he needs special care and child friendly environment, but as discussed above the provisions of the JJ act 2015 and 2017 rules had not been followed in the present case. He died unnatural death while in protection of police. As such slackness, negligence and insensitivity of police personnel in dealing with child in conflict with law Vikram Kumar can not be ruled out. Had the police personnel little more vigilant and followed the provisions of JJ act 2015 & 2017 Rules, the commission of suicide by child in conflict with law Vikram Kumar could have been averted.

As such state commission finds Police administration vicariously liable for unnatural death of child in conflict with law Vikram Kumar.

Deceased Vikram Kumar was minor, he has full life ahead of him, as such his death is a big loss to his family, as such Next of kin of the deceased is entitled for suitable compensation for their loss.

At the same time, it appears from the record that a departmental proceeding was initiated against the then officer in charge of Birpur Police station he was found guilty but he was awarded minor punishment only. That indicates insensitivity and

casual approach of the higher police officers are, while dealing with such gross negligence, of the police officers, is not following the provisions of JJ Act 2015 and rules framed u/s 110 of the act.

Considering the entire discussions made above, Registry is directed to issue show cause notice u/s 18(a) of PHR Act 1993 to the State of Bihar through the Chief Secretary to show cause within 8 weeks from receipt of notice, as to why not a compensation of Rs. 4 lakhs (Rs. 4, 00,000/- only) to the next of kin of the deceased Vikram Kumar, be not allowed.

At the same time, transmitting a copy of order DGP Bihar State Commission recommends fresh proceeding against the then officer in charge S.I. Amar Kumar Singh. Child welfare Police Officer S.I. Vinod Kumar Singh and Chowkidar Gopal Paswan in the light of discussion made above.

Before parting with this order, it is not out of place to mention here that the State Commission finding negligence and slackness on the part of Police Officer in not complying the Provision of J.J. Act 2015 & 2017 Rules in several cases, time and again recommended for sensitization and training of Police officers of the State towards mandatory provisions of J.J. Act 2015 and rules framed u/s 110 of the Act, but it seems recommendation of the State commission are not being taken seriously.

Let a copy of order be communicated to the Chief Secretary, Addl. Chief Secretary, Home and D.G.P, Bihar for information and to ensure Compliance.

Put up on 05.09.2022 for filing show cause and compliance report.

(Justice Vinod Kumar Sinha, Retd.)
Chairperson