

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 787 of 2020

**Krishanu Mondal
Vs.
State of West Bengal & Anr.**

For the Petitioner :Mr. Ayan Basu, Adv.
Mr. Sourav Bera, Adv.
Mr. Sumit Routh, Adv.

For the State :Mr. Saswata Gopal Mukherji, Ld. P.P.
Mr. Arijit Ganguly, Adv.

Heard on : 11.01.2021, 25.01.2021.

Judgment on : 29.01.2021

Subhasis Dasgupta, J:-

The court is approached under Section 482 of the Code of Criminal Procedure to quash a proceeding arising out of Baranagar Police Station Case No. 443 dated 03.09.2019, under Section 381/506//120B of Indian Penal Code, now pending before the court of learned Additional Chief Judicial Magistrate, Barrackpore vide. G.R. Case no. 5094 of 2019.

Learned advocate Mr. Ayan Basu representing petitioner submitted that petitioner being brother of principal accused, who was employed in a jewellery shop of *de facto* complainant, had been falsely implicated in this case alleging a false story of having committed theft of 02 kg 07 gram 900 milligram of gold ornaments, worth of 73 lakhs (approx.) from the jewellery shop of *de facto* complainant.

Mr. Basu was highly displeased with the delay caused in the submission of report of investigation, undertaken by the investigating agency for last one (1) year five (5) months. The further contention of Mr. Basu is that even after taking the petitioner into police custody for six days, no stolen articles could be recovered.

The allegation against the petitioner, in simpliciter, according to Mr. Basu, is that he threatened and misbehaved the *de facto* complainant, when *de facto* complainant had been to the house of petitioner in search of his brother Santanu Mondal (the principal accused), who is stated to have stolen 02 kg 07 gram 900 milligram of golden ornaments from jewellery shop of *de facto* complainant. Taking such grounds, Mr. Basu proposed for quashment of the proceeding, as against the petitioner.

Mr. Ganguly, representing State taking support of memo of evidence submitted that police had already taken investigation to book the main culprit being the brother of petitioner, but all the times the main culprit evaded his arrest, and in consequence thereof, most of the stolen articles went unrecovered, which are suspected to have been melted from a jewellery shop,

other than the shop of *de facto* complainant, used by the brother of petitioner, as it would be evident from seizure of some of the equipment necessary for melting gold item together with some different shaped and sizes of gold items, having total weight of 10.080 gm.

As regards the delay caused in the submission of report revealing outcome of investigation, Mr. Ganguly drew attention of the court to a report, furnished by Investigating Officer of this case, dated 11.01.2021.

The report is very conspicuous to reveal the steps had already been taken to get the main culprit booked, and also for the recovery of the stolen items. It is the effect of Covid-19 situation, which obviously interfered with the progress of investigation causing thereby the investigation to move slowly.

The situation, as it stands, is that most of the stolen golden items still goes unrecovered, and the main culprit, who is admitted to be brother of petitioner, still goes unbooked.

Since, Mr. Basu, raised his principal grievance for the delay caused in the submission of report of investigation, what was allegedly being conducted for the last one (1) year and five (5) months, the court feels it prudent to address such issue first to redress the grievance, as set out hereinbefore.

Undoubtedly, the life of the ongoing investigation is about one (1) year and five (5) months. In spite of several steps being undertaken by the investigating agency, most of the stolen articles went uncovered, which are suspected to have been melted in the meantime.

The emphasis supplied by Mr. Basu on the need for speedy investigation, cannot be disputed anymore, because investigation needs to be conducted expeditiously as possible, as the same being a fundamental right of an accused/ petitioner, as guaranteed under Article 21 of the Constitution of India.

Reliance sought to be established by Mr. Basu on a decision reported in **(2009) 3 SCC 355**, delivered in the case of **Vakil Prasad Singh Vs. State of Bihar**, thus can not be looked with doubt with regard to its applicability in a case, which is of course subject to the peculiarity of the circumstances involved in a particular case.

This is a case where a case was registered on 3rd September, 2019, under Section 381/506/120B I.P.C. upon receiving a complaint from *de facto* complainant. Steps were taken by the investigating agency to unearth the contention, depicted in F.I.R. by booking the main culprit, who is still evading arrest. The memo of evidence so far produced is also very significant that most of the stolen articles went unrecovered, till the submission of the report by the investigating agency before this court.

The seizure list contained in the copy of the Case Diary shows there has been little recovery of golden items, though there has been recovery of some equipment, popularly used in melting gold items.

It is the effect of Covid-19 situation surfaced over the entire country not only disturbing the ordinary function of court, but also the investigating agency, there might have been some unforeseen delay in the progress of

investigation so as to reach its culmination, which is of course a circumstance, peculiar in nature, neither even conceived, nor thought of, when the case was initiated in September, 2019.

Upon consideration of such peculiarity in the circumstances, the delay caused should not be taken to be a strong weapon pursuant to the proposition laid down in the case of **Vakil Prasad Singh Vs. State of Bihar (Supra)**.

It is thus delay caused in making submission of outcome of investigation would be inconsequential.

The petitioner seeking quashment of pending investigation is now on interim bail, and till date the interim bail of the petitioner, according to Mr. Basu, has not been confirmed by the learned court below with the obvious reason of putting the petitioner under an unwanted pressure, so as to secure presence of main culprit, the brother of petitioner.

Drawing attention to the F.I.R., it appears that petitioner was suspected to have assisted his brother, main culprit, in committing theft of gold articles from the jewellery shop of de facto complainant, and further contributed substantially to melt the stolen articles, and thereby helped to disappear the material evidence.

From the memo of evidence it is significant to reveal that a prayer for adding Section 201 and 411 I.P.C. has already been made before the learned court below.

Mr. Basu, in order to draw benefit from a decision reported in **(1982) 3 SCC 378** delivered in the case of **Free Legal Aid Committee, Jamshedpur**

Vs. State of Bihar, submitted that the law did not require that an accused on bail to appear before the court, before the charge-sheet is submitted. It was thus attempted to establish by Mr. Basu, that putting the petitioner on interim bail, petitioner was made to suffer undue hardship, not sanctioned by the authority of law.

When the petitioner was granted interim bail on 17th October, 2019, the same may be confirmed, in the absence of any adverse report of the investigating agency, revealing misuse of bail or its condition, if therebe any, imposed for the purpose.

Since, the investigation is ongoing, it would be improper to assume allegation brought against the petitioner to be trivial in nature. It is the outcome of investigation after reaching its culmination, which may furnish the required answer for the purpose, so as to redress the grievance, expressed by the petitioner in this case.

Since, investigation with its usual momentum is going ahead, which is evident from materials collected in the copy of Case Diary produced, it would be improper to exercise the extraordinary power of this court under Section 482 Cr.P.C. to quash the pending investigation.

The quashing of proceeding is thus refused.

However, the investigating agency is directed to take up the investigation expeditiously as possible intensifying the same so as to reach its culmination within reasonable period of time.

Petitioner is further directed to file an application before the learned court below, seeking confirmation of interim bail, and the learned court below is directed to dispose the same within a fortnight from the date of communication of this order to the learned court below, immediately upon receiving a report from police in accordance with the provisions of law after visualising the discussion made hereinabove.

With this observation and direction, the revisional application stands disposed of.

Office is directed to communicate this order to Court below without making any delay. The copy of Case Diary be returned forthwith.

Urgent photostat certified copy of this judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(Subhasis Dasgupta, J.)