

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

12.04.2021
D/L- 01
Ct. 23
(suvendu)

**WPA 5583 of 2019
(Via Video Conference)**

**Rashid Alam @ Gabbar
Vs.
The Deputy General & Inspector General of
Correctional Services, West Bengal & Anr.**

Mr. Lokesh Sharma
Mr. Sunil Chomal
Mr. Rama Kant Sharma

.....for the petitioner

Mr. Sabir Ahmed

.....for the State

Affidavit of service filed in court today is kept on record.

The petitioner seeks a direction upon the concerned authorities to transfer the petitioner from Bardhaman Central Correctional Home to any other Correctional Home, which is located near to the Court of the learned Additional Chief Metropolitan Magistrate, Bankshall Court at Kolkata. The petitioner says that the petitioner's transfer from Alipore Central Correctional Home, where he was sent by the learned Additional Chief Metropolitan Magistrate, Bankshall Court, Kolkata by its order dated 19th December, 2018, to Bardhaman Central

Correctional Home on the same day was made arbitrarily without seeking any judicial order. The petitioner could not also have been transferred to Bardhaman Central Correctional Home, which is far from the Court wherein petitioner's trial is continuing. The petitioner relies upon two orders. One, dated 21st July, 2017 passed in W.P. 10040 (W) of 2017 (Dalim Pandey Vs. The State of West Bengal & Ors.) and the other, dated 25th September, 2019 passed in W.P. 15683 (W) of 2019 (Ramesh Mahato Vs. The State of West Bengal & Ors.). Order passed in Ramesh Mahato (supra) relates to a co-accused of the petitioner, where the State-respondents were directed to bring back the said co-accused to Presidency Correctional Home.

On behalf of the State-respondents, the prayer for transfer of the petitioner from Bardhaman Central Correctional Home to Presidency Correctional Home is opposed on the ground that the petitioner along with his co-accused and another person had been allegedly operating a racket in the Presidency Correctional Home and for such reason, the petitioner had to be transferred.

Keeping in mind the ratio laid down by the Hon'ble Supreme Court in the judgment of State of Maharashtra & Ors. Vs. Saeed Sohail Sheikh

reported in AIR 2013 SC 168, the petitioner is required to be kept in a Correctional Home near to the Court of the learned Additional Chief Metropolitan Magistrate, Bankshall Court at Kolkata, wherein the petitioner's case is being tried. If the State authorities are apprehensive of any alleged racket in keeping the petitioner along with the co-accused in the Presidency Correctional Home, then the same speaks of the administrative flaws in the jail administration. However, without interfering into the policy matter of the State at this stage, the fact remains that the petitioner is required to be kept in a Correctional Home nearest to the Court of the learned Additional Chief Metropolitan Magistrate, Bankshall Court, Kolkata. If the State-respondents are not confident in keeping the petitioner along with the co-accused in the Presidency Correctional Home, then any Correctional Home, which is closest to the Court of the learned Additional Chief Metropolitan Magistrate, Bankshall Court, Kolkata apart from Presidency Correctional Home should be selected and the petitioner shall be transferred from Bardhaman Central Correctional Home to such Correctional Home. The transfer has to be made not beyond four weeks from date.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Arindam Mukherjee, J.)