

27.07.2021
Court No.30
rpan /09

W.P.A. No. 23349 of 2018

In re: An application under Article 226 of the
Constitution of India;

And

In re: **Najer Ali**

- Versus -

The State of West Bengal & Ors.

Ms. Rima Das

... for the Petitioner.

Mr. Rana Mukherjee,

Md. Sabir Ahmed

... for the State respondents.

The present *habeas corpus* petition has been preferred *inter alia* praying for recovery of one Ajer Ali, who is the brother of the petitioner and is missing since the month of September, 2018.

Ms. Das, learned advocate appearing for the petitioner submits that his brother was kidnapped by the private respondent nos. 9 to 15 herein and a complaint to that effect was lodged by the wife of Ajer Ali on 24th September, 2018. Though the said complaint was registered as Jalangi Police Station Case No.587 of 2018 dated 24th September, 2018 under Sections 363 and 365 of the Indian Penal Code and Sections 3, 4 and 5 of the Explosive Substances Act, proper investigation was not conducted by the police authorities and they could not recover Ajer Ali. Several representations were thereafter submitted by

the petitioner requesting the authorities to take appropriate steps but all in vain. Aggrieved thereby, the petitioner was constrained to prefer the present petition.

Md. Ahmed, learned advocate appearing for the State submits that on the basis of the complaint lodged by the wife of Ajer Ali, the FIR was registered against twelve accused persons and investigation was conducted. In course of such investigation, some of the private respondents were also arrested. Thereafter, upon completion of investigation, charge sheet was submitted on 26th May, 2020.

Drawing the attention of this Court to the contents of the charge sheet, Md. Ahmed submits that while the brother of the petitioner and his associates were preparing bombs, a blast occurred and the brother of the petitioner was seriously injured. Thereafter, his associates took him to Raninagar Godhanpara Private Diagnostic Centre but on refusal of treatment, they decided to take him to Berhampore Sadar Hospital. However, before they could reach the said hospital, the petitioner's brother expired and his body was thrown in the river. Such fact was ascertained from a confidential statement of one Ali Hossaion. Let the photocopy of the documents, as filed, be kept on record.

In reply, Ms. Das submits that investigation had been conducted in a slipshod manner and appropriate steps had not been taken to recovery of the petitioner's brother on a purported plea that he succumbed to the injuries of a bomb blast.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

A writ in the nature of *habeas corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person is investigated by a summary procedure. From the records it does not appear to be a case of illegal detention. In the event, the petitioner was aggrieved by the charge sheet, it was open to him to avail the remedies as provided under the Code of Criminal Procedure. This Court in exercise of its jurisdiction cannot usurp ordinary administration of criminal justice.

We are afraid that the exercise of the power of writ in nature of *habeas corpus* would perhaps not be feasible in the facts and circumstances of this case.

In view thereof, no interference is called for in the present writ petition.

Nothing herein shall, however, prevent the petitioner from initiating proceedings before any other forum seeking relief according to law.

With the above observations the present writ petition, being WPA 23349 of 2018 is disposed of

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Subhasis Dasgupta, J.) (Tapabrata Chakraborty, J.)