

05.04.2022  
Court No.13  
Item No.45+46  
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**WPA 19862 of 2021**  
**With**  
**WPA 1824 of 2022**

Santosh Singh  
Vs.  
The State of West Bengal and Ors.

(Through Video Conference)

Mr. Kishore Dutta, Id. Sr. Adv.,  
Mr. Ranjan Kali,  
Mr. Suraj Bhattacharjee,  
Ms. Nabanita Dutta

... For the Petitioner.

Mr. Anirban Ray, Id. G.P.,  
Mr. Raja Saha,  
Mr. Biswabrata Basu Mullick,  
Mr. Debasish Ghosh,  
Mr. Subhabrata Datta

... For the State.

Mr. Sandipan Ganguly, Id. Sr. Adv.  
Mr. A. Dutta,  
Mrs. S. Ghosh,  
Mr. S. Bhattacharya,  
Mr. V. Chatterjee

....for the IOCL

The writ petition has been filed alleging glaring deprivation of liberty. The petitioner has been arraigned as an accused in a charge sheet under Sections 15 and 16 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 read with Section 3/4 of the Prevention of Damage to Public Property Act, 1984 and Sections 379/411/414/120B/427 of the Indian Penal Code. Mandamus is sought for quashing of the said charge sheet.

The petitioner is the 9<sup>th</sup> accused. Admittedly, the petitioner was absconding. Proclamation and attachment and attachment orders are against him.

The brief facts of the case relevant for the instant decision are that a theft had occurred on the pipelines of the Indian Oil Corporation as HMRB Pipeline, Mourigram DS, Village-Panchpara, P.O.- Radhadasi, Howrah-711317. Pilferage was detected in channel no.68.7 km from Haldia at Sudesh Garden at Village-Nawpala under Bagnan Police Station. The pipeline was carrying highly inflammable petroleum products at a very high pressure. Such pilferage would have not only caused the loss to the Indian Oil Corporation but also may have caused a serious fire and/or explosion.

An FIR was registered by the Bagnan P.S. and investigation commenced. It was recorded that the actual drilling of the hole of the pipeline and theft was done by other accused persons. The writ petitioner, Santosh Singh, was named at two places in the charge sheet, alleging that he had received the stolen oil from one Ajoy Singh and stored it in a godown belonging to his father. It has also been stated in the charge sheet that the petitioner had financed the entire operation.

This Court had asked the learned counsel for the petitioner, as to why jurisdiction under Article 226 of the Constitution has been invoked in the face of

available alternative remedy under Section 482 of the Cr. P.C.

On the interim prayers for liberty sought, the learned counsel for the petitioner would argue that remedy under Section 438 of the Cr. P.C. is not available and hence, the Writ Court is the only remedy. In support of the contention on the question of maintainability, reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Vinod Dua vs. Union of India and others*** reported in **2021 SCC Online SC 414**. By placing paragraph 33 of the said decision, the petitioner would invoke jurisdiction of this Court to seek remedy against the charge sheet and against any coercive action thereunder. Admittedly, the writ petitioner had been absconding.

This Court has carefully considered paragraph 33 of the said decision which is a culmination and/or conclusion drawn by the Hon'ble Supreme Court after analyzing the earlier dicta.

Given the nature of the crime alleged against the petitioner, this Court is of the view that the remedy of the petitioner under Section 482 of the Cr. P.C. is comprehensive enough to address his grievances. This Court is not inclined to exercise jurisdiction under Article 226 of the Constitution of India in the instant case. Such remedy is purely discretionary.

The other argument advanced by Mr. Kishore Dutta, learned Senior Counsel for the petitioner is that the restrictions under the amended Sections 15 and 16 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, the remedy under Section 439 of the Cr. P.C. is neither efficacious nor alternative.

The nature of offence alleged against the petitioner, clearly attract the rigours of Sections 15 and 16 of the Act of 1962. Hence, the said Sections and the strict conditions imposed thereunder for liberty akin to those of the NDPS Act, cannot, therefore, be a ground for bypassing the procedure established under the Cr. P.C. and the said Act of 1962 to invoke the high prerogative writ jurisdiction under Article 226 of the Constitution of India. The object and purpose of the Act of 1962 would be diluted with any casual intervention under Article 226.

This Court does not find the instant case to be of any exception, or so glaring, that it warrants any interference under Article 226 of the Constitution.

Hence, both the writ petitions are dismissed with liberty, however, reserved to the petitioner to seek remedy, inter alia under Section 482 of the Cr. P.C.

There shall be no order as to costs.

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

**(Rajasekhar Mantha, J.)**