

11.03.2022
Court No.13
Item No.22
AP

WPA 4410 of 2022

**Sri Anubrata Mondal
Vs.
Union of India & Ors.**

(Through Video Conference)

Mr. Kishore Dutta, Senior Advocate,
Mr. Sandipan Ganguly, Senior Advocate,
Mr. Abhra Mukherjee,
Mr. Sanjib Das,
Mr. Rajarshi Basu,
Ms. Manaswita Mukherjee

... For the Petitioner.

Mr. S.V. Raju, Additional Solicitor General,
Mr. Samrat Goswami

....for the CBI

The writ petitioner is aggrieved by a notice under Section 160 of the Cr. P.C. issued by the Central Bureau of Investigation in connection with RC. Case No. RC0102020A0019.

The first notice is stated to have been issued some time on April 24, 2021 and not proceeded with, after the reply of the petitioner. Thereafter, a further notice was issued by the CBI in relation to case no. RC0562021S0018, under Section 160 of the Cr.P.C. asking him to appear at Durgapur away from his residence at Bolpur. In connection with the said case, a writ petition being WPA 1839 of 2022 was moved and on February 3, 2022, this Court granted limited protection against coercive action by the CBI against the petitioner, in the peculiar facts of such case.

By a fresh notice dated February 8, 2022, under Section 160 of the Cr.P.C. the petitioner was asked to be present at the CBI office at Nizam Palace, Kolkata at 11 a.m. on February 14, 2022 in connection with R.C. case No. RC0102020A0019. In reply thereto, the petitioner indicated that he is suffering from several ailments and sought deferment of the date. Alternatively, the petitioner sought to attend the office of the CBI via video conference from his residence at Bolpur itself.

A second notice was issued on February 14, 2022 once again asking the petitioner to appear before the CBI office at Nizam Palace, Kolkata on February 25, 2022.

The petitioner once again replied to the same by communication dated February 14, 2022 taking the same defenses of medical ailments as taken earlier. Once again, a request is made for appearance through video conference before the CBI from his residence at Bolpur. The CBI did not respond to the same. On the 4th of March 2022, a third notice was issued by the CBI asking the petitioner to appear before them at their office at Nizam Palace, Kolkata on the 15th of March 2022.

The petitioner in reply thereto, once again pleaded ailments and stated that he is needed to appear before a Medical Board at Kolkata on February 2, 2022. It is also submitted that in view of the ongoing pandemic, a place nearer to his residence was requested to be fixed for the purpose of appearance before the CBI.

The writ petition has been filed on 10.03.2022 after the CBI did not reply to the same.

Mr. Kishore Dutta, Ld. Senior Counsel appearing for the petitioner has urged three grounds to seek intervention of this Court under Article 226 of the Constitution. The first concerns the ailments afflicting the petitioner- rendering him unfit to travel- the veracity of which can be gleaned from the report of the Medical Board comprising of four medical officers from the Bolpur SD hospital. The notice itself is thereafter assailed. It is argued that the expression 'Police Station' under Section 160 of CrPC r/w Section 2(s) should mean the Police station under which the petitioner resides. It is also argued that there exists a reasonable apprehension of bias since the CBI has revived investigation despite having dropped it following the order of this Court in WPA 1839 of 2022(supra). The CBI is also required to furnish the gist of the notice in accordance with S. 160 of CrPC and Cl. 9.19(B) of the CBI Manual.

Mr. S.V. Raju, Ld. ASG appearing for the, CBI submits that the petitioner's Facebook Account contains evidence of him travelling and attending public meetings and functions in Howrah, Durgapur, Nadia and Bardhaman, indicating that the inability to travel outside Bolpur is a farce. Further, since the jurisdiction of the CBI extends to the entirety of West Bengal, the petitioner must appear at the CBI Office at Nizam Palace. The report of the Medical Board is also alleged to be suspicious since such

Boards are usually constituted at the instance of the Courts or public authorities and not by private individuals. Additionally, it is submitted that the gist and purpose of the investigation is available to the public on the CBI website.

Having carefully heard the submissions of the parties, this Court notes that indeed the petitioner has been traveling outside Bolpur and on a couple of instances traveled all the way to Howrah. He has appeared in Kolkata before the Medical Board, the ailments referred to by the Medical Board are not as serious as to require the petitioner to remain confined to his home or a hospital.

The other arguments advanced, are not relevant for the purpose of this decision since this Court is of the view that the grievances raised by the petitioner are not such, that warrant interference of a writ Court under Article 226 of the Constitution of India.

The remedy under Article 226 of the Constitution of India in the face of available remedy under Section 438 of the Cr.P.C. is discretionary. The writ petition may be maintainable but as to whether it should be entertained or not is to be assessed in the facts and circumstances of each case. This Court is not satisfied that the facts of the instant case would warrant such interference.

For the reasons stated hereinabove, the writ petition must fail and is hereby dismissed.

It is absolutely made clear that the dismissal of the writ petition shall not prejudice any of the rights of the petitioner inter alia under Section 438 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.)