

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 362 of 2022

With

CAN 1 of 2022

(Through Video Conference)

Reserved on: 16.03.2022

Pronounced on: 29.03.2022

Sri Anubrata Mondal

...Appellant

-Vs-

Union of India and Others

...Respondents

Present:-

Mr. Vivek K. Tankha,
Mr. Kishore Dutta,
Mr. Sandipan Ganguly,
Mr. Sandeep Dasgupta,
Mr. Abhiro Mukherjee,
Mr. Sanjib Kumar Dan,
Mr. Rajarshi Basu,
Mr. Vipul Tiwari,
Ms. Manaswita Mukherjee,
Ms. Priyanka Chowdhury, Advocates
... for the appellant

Mr. Y.J. Dastoor, Additional Solicitor General,
Mr. Billwadal Bhattacharyya, Advocate
... for the Union of India

Mr. S.V. Raju, Additional Solicitor General,
Mr. Phiroze Edulji,
Mr. Anshuman Singh,
Mr. Ankit Bhatia,
Mr. Arpit Goel,
Mr. Harsh Paul Singh,
Mr. Samrat Goswami,
Ms. S. Raju, Advocates
... for the CBI

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 11th March, 2022 whereby WPA 4410 of 2022 has been dismissed.
2. Appellant had approached the writ Court challenging the notice dated 04th March, 2022 issued to him by the respondent, Central Bureau of Investigation (CBI) under Section 160 of Cr.P.C. requesting him to appear on 15th March, 2022 at 11:00 a.m. at the office of the DIG & Head of Branch, Central Bureau of Investigation, Anti-Corruption Branch, Nizam Palace at Kolkata for the purpose of answering certain questions pertaining to the case No. RC0102020A0019 under Section 120B of IPC and Sections 7, 11 and 12 of P.C. Act, 1988.
3. Learned Single Judge while rejecting the petition, has found the plea of ailment as not sustainable and other grounds not relevant and in respect of apprehension of arrest, it is found that the facts of the case did not warrant interference under Article 226 of the Constitution in the face of availability of remedy under Section 438 of Cr.P.C.
4. Submission of Mr. Vivek K.Tankha, learned Senior Counsel appearing for the appellant is that the same prayer was made earlier before the learned Single Judge in the similar fact situation in WPA 1839 of 2022 and by the order dated 03rd February, 2022, learned Single Judge had extended the interim protection and that the appellant is only a witness and not an accused, therefore, he should not be unnecessarily harassed and the appellant has no objection if the respondent CBI comes and makes enquiry or records his statement at or near his residence. He submits that there was no reason for the learned Single Judge to differ from his earlier order and take a different view while rejecting the present petition. He further submits that the appellant is

apprehending arrest if he appears before the respondent CBI and that the impugned action infringes the appellant's right under Article 21 of the Constitution.

5. Opposing the prayer, Mr. S.V. Raju, learned Additional Solicitor General appearing for the respondent CBI has submitted that the notice has been issued to the appellant as a part of investigation process and that there is no reason to apprehend arrest and that earlier order was passed by the learned Single Judge at the interim stage, therefore, it cannot be treated as a precedent and the appellant is now seeking anticipatory bail in the guise of interim protection and that Section 160 is a part of Chapter XII of Cr.P.C. relating to investigation and in the absence of any extraordinary circumstance, no interference in the investigation is required and the appellant has also not come with the clean hands. He has further submitted that the appellant has already been accommodated and his earlier requests were accepted.

6. Mr. Y.J. Dastoor, learned Additional Solicitor General appearing for the Union of India has submitted that the appellant is a very influential person and is even referred to as "Honourable" by the Medical Board and that on the date fixed for appearance before the CBI, he had come to the SSKM Hospital at Kolkata which is only 800 metres away from the concerned police station where he was required to appear, therefore, the plea raised by him about inability to appear is a false plea.

7. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the impugned notice was issued under Section 160 of Cr.P.C. falling under Chapter XII of the Code relating to information to the police and their powers to investigate. Under Section 160 of Cr.P.C., police officer has the power to require attendance of any person who appears to be acquainted with the facts and circumstances of the case. The scope of

interference in such a notice issued at the investigation stage is limited. The Hon'ble Supreme Court in the matter of **State of Bihar and Another vs. J.A.C. Saldanha and Others** reported in (1980) 1 SCC 554 has held that the investigation of an offence is the field exclusively reserved for the executive through the police department and unless an extraordinary case of gross abuse of power is made out by those in charge of investigation, the Court should be slow to interfere at the stage of investigation. Similar is the view taken in the matter of **State of West Bengal vs. S.N. Basak** reported in AIR 1963 SC 447. In the present case, there is nothing on record to show that any such extraordinary circumstances exist requiring interference. Considering somewhat similar issue in respect of scope of interference in show-cause notice, the Hon'ble Supreme Court in the matter of **Union of India and Another vs. Kunisetty Satyanarayana** reported in (2006) 12 SCC 28 has held that ordinarily, a writ petition should not be entertained against a mere show-cause notice or a charge-sheet unless jurisdictional issue is involved. Same is the view taken in the matter of **Special Director and Another vs. Mohd. Ghulam Ghouse and Another** reported in (2004) 3 SCC 440.

8. So far as the reliance of the learned Counsel for the appellant on the earlier order dated 03rd February, 2022 passed by the learned Single Judge in WPA 1839 of 2022 wherein interim protection was extended, is concerned, that was an order passed in relation to a different crime number and petition was entertained considering the facts of that case by noting that each case must be looked into on its own facts and circumstances and in that case interim relief was extended only by expressing prima facie view whereas, the impugned order is a final order passed by the learned Single Judge dismissing the petition. The judgment of the Hon'ble Supreme Court in the matter of **State of Assam vs. Barak Upatyaka D.U. Karmachari Sanstha** reported in

(2009) 5 SCC 694 makes it clear that an interim order which does not finally and conclusively decides an issue cannot be a precedent and any reason assigned in support of such non-final interim order, containing prima facie findings, is only tentative. In view of this, the final impugned order of the learned Single Judge under challenge in this appeal cannot be faulted on the ground that a different view on prima facie findings was taken by the learned Single Judge in an interim order that too in another case at an earlier stage. Hence, interim order of the Madhya Pradesh High Court dated **09th December, 2021** passed in **WP No. 26943 of 2021** is also of no help to the appellant as in that order at an interim stage, earlier interim order was followed keeping in view the judicial discipline.

9. That apart, this Court also finds substance in the arguments of learned Counsel for respondents that the plea of the appellant that he is suffering from various ailments due to which he is unable to appear for the purpose of investigation, is unsustainable as material has been placed on record to show that the appellant is travelling to different places and had even come to Kolkata, near the place where he is required to appear in pursuant to notice. Appellant is seeking the interim protection to the effect that no coercive steps should be taken against him but there is no material on record showing that any such steps are intended by the respondent. The Hon'ble Supreme Court in the matter of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others** reported in **2021 SCC OnLine SC 315** has deprecated the practice of passing the order restraining arrest pending investigation even when the questioning petitions under Section 482 of Cr.P.C. or Article 226 of the Constitution is dismissed. In the present case, the appellant is not even an accused, hence, no error is found in the order of the learned Single Judge in refusing to exercise the discretion under Article 226 of the Constitution.

Learned Single Judge has already clarified that dismissal of petition will not prejudice any other rights of the petitioner inter alia under Section 438 of the Cr.P.C.

10. The record further reflects that earlier, notice dated 24th April, 2021 under Section 160 of Cr.P.C. was given to the appellant for appearance on 27th April, 2021 and the appellant had sent reply dated 26th April, 2021 with a prayer to grant a fortnight's time to appear and the prayer was accepted. Then again a notice dated 08th February, 2022 was given for appearance on 14th February, 2022 and vide reply dated 14th February, 2022, appellant had made a prayer for fixing the date after 11th March, 2022. This prayer was also accepted and fresh notice dated 04th March, 2022 was issued for appearance on 15th March, 2022. Hence, this Court does not find the action of the respondents to be unreasonable in issuing the impugned notice. Mere issuance of notice under Section 160 of Cr.P.C. does not offend the fundamental right enshrined under Article 21 of the Constitution.

11. It is worth mentioning that the date fixed by the impugned notice that 15th March, 2022, i.e., has already passed.

12. In the above circumstances, no ground is made out to interfere in the order of the learned Single Judge. The appeal is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
29.03.2022

PA(RB)
(A.F.R. / N.A.F.R.)