

20.07.2022
Court No. 19
Item no.9
sn

W.P.A. No. 5747 of 2022

Sri Bablu Dhara
Vs.
The State of West Bengal & ors.

Mr. Saibal Acharyya
Mr. Malay Bhattacharya
Mr. Pradip Paul
Mrs. S. Mondal

...for the petitioner.

Mr. Kaustuv Mishra

...for the respondent nos. 15 to 19.

Mr. Kaushik Chandra Gupta
Ms. Rama Halder

....for the respondent no. 21.

Mr. Debnath Ganguly
Mr. Aranya Saha

....for the respondent no. 10.

Mr. Ashim Kumar Ganguly
Mr. Bellal Shaikh ..for the State

Perused the police report.

It appears that the investigation with regard to Sabang Police Station Case No. 128 of 2020 dated June 17, 2020 under Sections 302/34 of the Indian Penal Code has been concluded and the charge sheet has been filed vide Charge Sheet no. 138 of 2021 dated April 30, 2021 under Sections 363/306/34 of the Indian Penal Code.

The petitioner had moved this application on the ground that the provisions of Section 376 of the

Indian Penal Code read with Sections 7 and 8 of the POCSO Act ought to have been incorporated in the First Information Report. The police investigation reveals that the cause of death was found to be death due to effects of asphyxia on account of compression of neck by means of a ligature in a case of hanging, ante mortem in nature.

The learned advocate for the respondent no.10 submits that the post mortem report indicates that there was no injury and the genitals were healthy and there had been no allegation either of rape or sexual assault when the complaint was filed. The submissions of the petitioner are after thoughts.

The statement of available witnesses were recorded. An unnatural death case was registered. Thereafter an investigation was also made. According to the investigation and the post mortem report, sexual assault had not been detected.

The investigating agency upon obtaining the chemical analysis report and the report of vaginal swab and smear from SFSL, shall consider whether any sexual assault was committed or not. The autopsy surgeon also gave the same opinion.

According to the petitioner, the minor girl had been kidnapped. At least for the purpose of investigation, Section 7 of the POCSO Act ought to

have been incorporated in the First Information Report.

The principal accused persons as per the police investigation were arrested and they were subsequently released on bail.

This Court finds that even though a charge sheet has been submitted before the learned Court below, the police authorities have kept the provision for filing a supplementary charge sheet, upon taking into consideration the chemical analysis report of the viscera, as also the report of the vaginal swab and smear. Thus, on receipt of such reports, all the angles including the angle of applicability of POSCO Act, would be looked into. The Superintendent of Police, Paschim Medinipore, shall supervise the process.

The learned advocate for the respondent no.21 submits that there are no allegations against the said respondent and the said respondent has been unnecessarily implicated in this proceeding.

Learned advocate for the respondent nos. 15 to 19 submits that they are not connected with the alleged incident.

The Superintendent of Police, Paschim Medinipore shall make sincere effort in order to ensure that the reports which are awaited, are received expeditiously. As the death of a minor girl

took place subsequent to the incident of kidnapping, those reports are relevant for the purpose of investigation.

A copy of the charge sheet filed before the learned Court below, be handed over to the learned advocate for the petitioner. It is also made clear that the petitioner may approach the learned court below with the prayers made in the writ petition. The criminal court at any stage, can alter the charge or direct incorporation of further sections.

This writ petition is disposed of.

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

All parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)