

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Reserved on: 12.08.2022
Pronounced on: 30.08.2022

WPA(P) 187 of 2022

Arijit Majumdar and Others

...Petitioners

-Vs-

The State of West Bengal and Others

...Respondents

With

WPA(P) 145 of 2022

Anindya Sundar Das

...Petitioner

-Vs-

The State of West Bengal and Others

...Respondents

With

WPA(P) 146 of 2022

Anindya Sundar Das

... Petitioner

-Vs-

The State of West Bengal and Others

...Respondents

Present:-

Mr. Rajdeep Mazumder,
Mr. Moyukh Mukherjee, Advocates
...for the petitioners in
WPA(P) 187 of 2022.

Mr. Phiroze Edulji,

Mr. Debapriya Samanta,
 Mr. Avijit Roy, Advocates
 ...for the petitioners in
 WPA(P) 145 of 2022 and
 WPA(P) 146 of 2022.

Mr. Samrat Sen, Id. AAAG
 Mr. Anirban Ray, Id. GP
 Mr. Subhabrata Datta,
 Mr. Nilotpall Chatterjee, Advocates
 ...for the State in
 WPA(P) 187 of 2022.

Mr. Anirban Ray, Id. GP
 Md. T.M. Siddiqui,
 Mr. Debashis Ghosh,
 Mr. Nilotpall Chatterjee, Advocates
 ...for the State in
 WPA(P) 145 of 2022 and
 WPA(P) 146 of 2022.

Ms. Susmita Saha Dutta, Advocate
 ...for the Union of India

Mr. Billwadal Bhattacharyya, Id. ASG
 Mr. Bhaskar Prosad Banerjee,
 Mr. Debasish Tandon, Advocates
 ...for the NIA.

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
 CHIEF JUSTICE
 THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
 JUDGE**

Prakash Shrivastava, CJ:

1. These public interest petitions have been filed with the prayer to transfer the investigation to the respondent No.5 National Investigation Agency.
2. In WPA(P) 145 of 2022, the case of the petitioner is that on 29th of March, 2022 an explosion occurred in the house in Sardarpara area, Phoolmalancha Panchayat near Basanti in South 24 Parganas. The said explosion was the result of bombs being stockpiled in the house and in that explosion one person namely Farukh Sardar had died. According to the petitioner, this incident is a part of a series of such incidents which

had taken place in recent past involving stockpiling of the weaponry, arms, ammunition, artillery and bombs which had caused great loss of life, limb and property. In paragraph 8 of the petition, the petitioner has given list of such incidents within a period of one year which is as under:

“8. The petitioner states that the aforementioned blast is only the tip of the iceberg and a representative list of the various blasts that have taken place in the last one year is summarised by the table to follow. It is stated that this list is representative and not exhaustive.

Incidents of recent bomb blasts in West Bengal between 1st April
2021 to 1st March 2022

Sl.	Date	Incident
1.	19 th April 2021	Bomb Explosion Outside BJP Workers Home in Panihati, North 24 Parganas District.
2.	19 th April 2021	Bomb blast at Banashpur village in the Mallarpur area of Birbhum at Night.
3.	21 st April 2021	The explosion took place near the house of Trinamool Congress (TMC) regional president Bakul Sheikh in Berugram panchayat area of Ketugram, Purba Bardhaman District. A bomb exploded in front of his house in Chinishpur that day. Raju Sheikh and Raja Sheikh were seriously injured in the blast.
4.	22 nd April 2021	Man killed, another injured in bomb blast near Titagarh in North 24-Parganas. Several bomb explosions rocked the Megna jute mill area.
5.	29 th July 2021	Two police personnel were injured in a crude bomb explosion in Jagatdal area of North 24 Parganas district in West Bengal.

6.	7 th September, 2021	Unknown miscreants hurdled three crude bombs outside the house of BJP MP Arjun Singh in the North 24 Parganas district of West Bengal. Notably, when the bombs were hurdled at night on Tuesday, security personnel were present outside the premises.
7.	1 st December, 2021	A blast in South 24 Parganas district's Nodakhali in Diamond Harbour area, where three people died in bomb explosion today.
8.	30 th December, 2021	Two children were injured in an explosion at a garbage vat in Salt Lake's Nayapatti area on Thursday morning, police said. The children were playing near the vat, kept aside a ground, when the low-intensity blast happened around 11.30 am, they said.
9.	19 th December, 2021	Kolkata Municipality Corporation elections: Bomb blast outside polling booth in Sealdah and Taki Boys School, three injured.
10.	3 rd January, 2022	A bomb exploded in the house of accused Kankan Karan, a resident of Paschim Bhangamari village. While accused Kankan Karan was seriously injured in the explosion, another person succumbed to his injuries. A case was filed at the Khejuri Police Station in East Medinipur on 4 th January 2022 and the NIA took over the investigation on 25 th January 2022.
11.	21 st January, 2022	At least four people have been injured in a parcel bomb blast in a pharmacy in West Bengal's Uttar Dinajpur District

		The incident took place at Baharail in Hemtabad
12.	22 nd February 2022	An infant was killed, while three other children were seriously injured in a bomb blast outside a house in the Kuitha village of District Birbhum in West Bengal. On Tuesday afternoon, a mysterious sound of a blast was heard behind the house of a man named Monir Sheikh of Kuitha village, which comes under the Sadaipur police station in Birbhum.

3. According to the petitioner, the case registered on the basis of incident of 29.03.2022 is a scheduled offence under the National Investigation Agency Act, 2008 (for short, 'the NIA Act'), therefore, it is required to be investigated by the respondent No. 5 NIA.

4. The report in the form of affidavit filed on behalf of the respondent No. 3 discloses that on 29.03.2022 around 9.40 hours Sub-Inspector Pradip Kumar Das of Basanti PS had received information that at the house of one Mofijuddin Sardar, his brother Hamijuddin Sardar along with 2/3 persons was preparing bombs which suddenly exploded, as a result of which the house caught fire and 2/3 persons including Faruk Sardar were injured. On the written complaint of Sub-Inspector Pradip Kumar Das vide Basanti Police Case No. 215/2022 dated 29.03.2022 offence under Section 286, 326, 307, 120B of the IPC and Section 3,4,5 of the Explosive Substances Act, 1908 (for short, 'the Act of 1908') was registered and is being investigated. It is also disclosed that later the injured accused Faruk Sardar had died, therefore, Section 302 of the IPC was added.

5. In WPA(P) 146 of 2022, the case of the petitioner is that on 30th of March, 2022 an explosion occurred in a field in Gauripur village under Chandmani Panchayat in Ratua in the Malda district as a result of bombs kept there in which a 9 years old girl was injured. According to petitioner, this incident was also a part of a series of several such incidents which had taken place within a year. In this case also the plea of the petitioner is that since the offence in question is scheduled offence under the NIA Act, therefore, it is required to be investigated by the respondent No. 5 National Investigation Agency. The report in the form of affidavit filed by respondent no. 3 reveals that in respect of above incident, P.S. Case No. 147/22 dated 30th of March, 2022 for offence under Section 326/286/307 of I.P.C. read with Section 3/4 of Explosive Substances Act, 1908 has been registered and is being investigated by Officer-in-Charge of concerned police station.

6. In WPA(P) 187 of 2022, on 24th of April, 2022, a bomb was lying underneath a litchi tree beside a local mosque in Gopalnagar Village, Malda district. 5 children mistook this crude bomb for a cricket ball and started playing with it when all of a sudden the bomb exploded leaving the children severely and critically injured. On the complaint of one Sukumar Saha, Kaliachak Police Station Case No. 422 dated April 25, 2022 under section 286, 308, 324 and 326 of the IPC and Section 9B(2) of the Explosives Act, 1884 (for short, 'the Act of 1884') was registered and investigation was started by the Sub-Inspector of Golapganj Investigation Centre under the Kaliachak Police Station. The investigation is still pending. The affidavit in opposition filed by the respondent No. 4 reveals the names of 2 accused persons who had

prepared the crude bomb which were kept at the place of occurrence. The case of the petitioner is that large number of bombs were recovered from the said area during the course of investigation by the Officer-in-Charge of Kaliachak Police Station and that offence under the provisions of the Act of 1908 is made out but the police had wrongly registered the offence under the Act of 1884.

7. Submission of learned Counsel for the petitioner in WPA (P) 145 of 2022 and WPA(P) 146 of 2022 is that since the offence registered in these cases are scheduled offence under the NIA Act, therefore, the procedure prescribed under Section 6 of the NIA Act was required to be followed. It has further been submitted that since the provisions of Section 6 have not been followed, therefore, this Court may exercise the jurisdiction under Section 226 of the Constitution and transfer the investigation to the NIA.

8. Submission of the learned Counsel for the petitioner in WPA(P) 187 of 2022 is that the alleged offence is an offence under the Act of 1908 and the police had committed an error in registering the offence under the Act of 1884. Further submission is that since offence had been committed under the Act of 1908, which is a scheduled offence under NIA Act, therefore, it is required to be investigated by the NIA.

9. Learned Advocate General has not disputed that the offences committed in these petitions are scheduled offences under the NIA Act, but his submission is that every scheduled offence under the NIA Act is not required to be investigated by the National Investigation Agency. He has referred to the preamble of the NIA Act and has submitted that only in 4 circumstances the scheduled offences can be referred for investigation to NIA and these 4 circumstances are (1) offences

affecting the sovereignty, security and integrity of India, (2) offences affecting the security of State, (3) offences affecting friendly relations with foreign States, and (4) offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations. He has further referred to the statement of object and reasons to the Act. He has not disputed that the procedure as prescribed under Section 6(1) to Section 6(3) of the Act was not followed and the report as required by Section 6(1) was not forwarded but his submission is that if this procedure was not followed, Central Government could have exercised suo motu power under Section 6(5) of the Act. In support of his submission, he has placed reliance upon the judgment of the Division Bench of the Bombay High Court in the matter of **Pragyasingh Chandrapalsingh Thakur vs. State of Maharashtra. Through Additional Chief Secretary and Others** reported in **2013 SCC OnLine Bom 1354**.

10. Learned Counsel for the State appearing in WPA (P) 187 of 2022 has submitted that there was no delay in registering the FIR and that the prayer in the writ petition relates to Section 6(5) of the NIA Act for exercise of suo motu power by the Union of India. He further submits in WPA(P) 187 of 2022 offence under Section 9B(2) of the Act of 1884 has been committed which is not a scheduled Act under the NIA Act, hence no investigation by the respondent No. 5 NIA is required. He has further referred to the order of the Magistrate dated 25th of April, 2022 (page 11 of the affidavit in reply) and has submitted that the Magistrate has already recorded the nature of offence and that the State agency is

properly investigating the offences. He has opposed consideration of the new documents filed by the petitioner along with the affidavit in reply.

11. Learned Counsel for the NIA has also submitted that since it is a scheduled offence under the NIA Act, therefore, it is required to be investigated by the NIA.

12. We have heard the learned Counsel for the parties and perused the records.

13. In the incident under consideration in all the three petitions, bombs had exploded resulting into injury or death. In WPA(P) 145 of 2022 and WPA(P) 146 of 2022, police had registered the offence under Sections 3,4, and 5 of the Act of 1908 along with the offence under the IPC. But in an incident of similar nature in WPA(P) 187 of 2022, the police had registered offence under the provisions of the Act of 1884. Referring to various FIRs relating to similar incident which are enclosed along with the affidavit in reply filed in WPA(P) 187 of 2022, learned Counsel for the petitioner has pointed out that several FIRs within the jurisdiction of Kaliachak Police Station were registered relating to recovery of huge quantity of bombs being FIR No. 0423 dated 26.04.2022 PS Kaliachawk, FIR No. 0426 dated 27.04.2022 PS Kaliachawk, FIR No. 0430 dated 28.04.2022 PS Kaliachawk. He has submitted that though these are the cases relating to recovery of bombs in the same area but offence under Section 9B(2) of the Act of 1884 have been registered to avoid investigation by the NIA.

14. In the above circumstances, the writ petitions where offence under Explosive Substances Act is registered and writ petitions where offence under Explosives Act is registered are dealt with separately as under:-

WPA(P) 145 of 2022 and WPA(P) 146 of 2022

15. The undisputed position before this Court is that the offences in these two cases are scheduled offences under the NIA Act. Section 2(1)(g) of the NIA Act defines scheduled offence to mean an offence specified in the schedule. The schedule to the NIA Act covers the offence under the Act of 1908 which have been registered in present cases. Section 6 of the NIA Act, which relates to the investigation of scheduled offences is relevant for the present controversy which reads as under:

“6. Investigation of Scheduled Offences.—(1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this

Act, it may, *suo motu*, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.

(8) Where the Central Government is of the opinion that a Scheduled Offence has been committed at any place outside India to which this Act extends, it may direct the Agency to register the case and take up investigation as if such offence has been committed in India.

(9) For the purposes of sub-section (8), the Special Court at New Delhi shall have the jurisdiction.”

16. A bare perusal of the above Section 6(1) reveals that on receipt and recording the information under Section 154 of the Cr.P.C. concerning scheduled offence, it is mandatory for the Officer-in-Charge of the police station to forward the report to the State Government forthwith. Thus, the word ‘shall’ used in this sub-section casts such a mandatory duty. Under Section 6(1) ‘Shall’ is to be read as mandatory keeping in view the nature of the offences covered under the schedule and object of the NIA Act. In the Principles of Statutory Interpretation 14th Edition by Justice G.P. Singh it has been noted that:

“(e) Use of ‘shall’ or ‘shall and may’; ‘must’ and ‘should’

The use of word ‘shall’ raises a presumption that the particular provision is imperative. For instance, rule 57(2) of Schedule II to the Income-tax Act, 1961, provides that the full amount of purchase money payable ‘shall’ be paid by the purchaser to the Tax

Recovery Officer on or before the fifteenth day from the date of sale of property. The Supreme Court relied on the word ‘shall’ as well as earlier decisions of the Court on *pari materia* provisions in Order XXI of the CPC, to hold that making of the deposit by the intending purchaser is mandatory. Similarly, section 45 of the Arbitration and Conciliation Act, 1996, provides that a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, ‘shall’, at the request of one of the parties or any person claiming through or under him, refer the parties to the arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed’. The Supreme Court held that the language of section 45 of the Act suggests that unless the Court finds that an agreement is null and void, inoperative and incapable of being performed, it is obligatory upon the Court to make a reference to arbitration.

However, this *prima facie* inference about the provision being imperative may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction.”

17. The Scheme of Section 6 indicates that if the report, as required by Section 6(1) is not forwarded then no action in terms of Sub-section (2) to (4) can be taken. Hence, compliance of Section 6(1) is mandatory for the Officer-in-Charge of police station. On registration of scheduled offences under the NIA, the Officer-in-Charge of the concerned police station has no option but to send the report to the State Government without any delay.

18. It is also worth noting that sub-section 6(1) casts a duty on Officer-in-charge of the police station to send the report ‘forthwith’. Therefore, prompts and immediate action for sending the report is required to taken.

19. In terms of sub-section 2, it is incumbent upon the State Government to forward the report to the Central Government as expeditiously as possible. Thus, no unnecessary delay is permissible on the part of the State in sending the report to the Central Government.

20. Sub-section 3 requires the Central Government to determine within specified period of 15 days from the date of receipt of the report, two important issues firstly, whether offence in question is scheduled offence and secondly considering the gravity of the offence and other relevant factors if the case is fit to be investigated by the NIA. If the Central Government opines that the offence is a scheduled offence and the case is fit to be investigated by the NIA, then it is required to direct the NIA to investigate the offence.

21. The above view is duly supported by the judgment of Hon'ble Supreme Court in the matter of **Naser Bin Abu Bakr Yafai vs. State of Maharashtra and Another** reported in **(2022) 6 SCC 308**.

22. In the present case, though admittedly scheduled offence under the NIA Act has been registered, but the Officer-in-charge of the concerned police station has not sent the report to the State Government in terms of Section 6(1) of the Act, therefore, the steps which are required to be taken in terms of Section 6(2) to 6(4) of the Act by the State Government and Central Government could not be taken. The Officer-in-charge of the police station has failed to perform the mandatory duty cast upon him under Section 6(1) of the NIA Act.

23. So far as the Division Bench judgment of the Bombay High Court in the matter of **Pragyasingh Chandrapalsingh Thakur (supra)** replied upon by the learned Advocate General is concerned, in that case the constitutional validity of the provisions has been upheld and the

argument that Section 6 of the NIA Act confers absolutely arbitrary, unbridled and unguided powers, has been rejected by clarifying that merely because a scheduled offence is committed, the Central Government will not direct that it will be investigated by the agency but it will have to apply its mind to the gravity of the offence and other relevant factors. Thus, this said judgment is of no help to the State.

24. It is also worth noting that the investigation in these two cases is still pending in the hands of the State investigating agency. Hence, we are of the opinion that now the concerned Officer-in-charge of the police station must follow the provisions of Section 6(1) of the Act without any delay.

WPA(P) 187 of 2022

25. It is the undisputed position before this Court that in this case that the bomb had exploded resulting into injury to 5 children. The report and affidavit in opposition of the respondent No. 4 further reveal that on the next day of the incident 34 more unexploded crude bombs were found which were subsequently diffused with the help of bomb disposal squad on 25th of April, 2022. In spite of this, police has registered the offence under the Explosives Act, 1884 instead of the Explosive Substances Act, 1908. Offence under the Explosive Substances Act is scheduled offence whereas the Explosives Act is not included in the schedule to NIA Act.

26. A bare perusal of the Act of 1884 reveals that the Act has been enacted to regulate the manufacture, possession, use, sale, transport, import and export of explosives. Section 6 of the Act empowers the Central Government to prohibit the manufacture, possession or importation of the notified dangerous explosives. Section 6B to 6F

relate to grant, refusal, revocation of the license. Section 7 is the rule making power relating to inspection, search, seizure, detention and removal etc.

27. The offence under Section 9B(2) relates to manufacture, possession or transport of any explosive in contravention of notification issued under Section 6 of the Act. No such notification issued under Section 6 has been placed on record by the State to justify registration of offence under 9B(2) of the Act of 1884.

28. So far as the Act of 1908 is concerned, Section 3 to 5 of the Act provide for punishment for following acts:

“3. Punishment for causing explosion likely to endanger life or property.—Any person who unlawfully and maliciously causes by—

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than (ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.—Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special

category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India,

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,—

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

5. Punishment for making or possessing explosives under suspicious circumstances.—Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

29. The above Section 3 to 5 cover wide range of activity which may endanger life by unlawful and malicious use of explosive substance. In the case of **Mohammad Usman Mohammad Hussain Maniyar and Others vs. State of Maharashtra** reported in (1981) 2 SCC 443 relied upon by the Counsel for the petitioner, Hon'ble Supreme Court has duly considered the meaning, scope and ingredients of Section 5 of the Act of 1908.

30. In the present case apparently the offence under the provisions of Explosive Substances Act have been committed. In the similar circumstances, an offence of similar nature in WPA(P) 146 of 2022, the Officer-in-charge of the concerned police station had registered offence under the provisions of Explosive Substances Act. No justifiable reason has been put forth by the Counsel for the State for not registering the offence under the provisions of Explosive Substances Act in this case. Learned Advocate General in these circumstances has also fairly submitted that this Court can proceed on the basis that the offence under the provisions of Explosive Substances Act has been committed in this case also. That apart, under Section 6(5) of the NIA Act, the Central Government will determine if the offence in question is scheduled offence.

31. In the above circumstances, we direct in WPA (P) 187 of 2022 to the Officer-in-Charge of the concerned police station to register the offence under the provisions of the Act of 1908. On registration of offence under the Act of 1908, provisions contained in Section 6 of the Act are required to be followed.

32. Thus, WPA(P) 187 of 2022, WPA(P) 145 of 2022 and WPA(P) 146 of 2022 are allowed. We find that though in these cases scheduled

offence under NIA Act has been committed but provisions of Section 6 have not been complied and Officer-in-charge of the concerned police station has not forwarded the report to the State Government 'forthwith' in terms of Section 6(1) of the NIA Act.

33. Hence, considering facts of the case, in all the three writ petitions, we direct the Officer-in-charge of the concerned police to send the report to the State under Section 6(1) of the NIA Act immediately but not later than 3 days from today. On receipt of the report, the State Government will take action of forwarding the report in terms of Section 6(2) without any delay but not later than 3 days from the date of receipt of the report from the Officer-in-charge of concerned police station. Central Government thereafter will take an appropriate decision as required by Section 6(3) of the Act.

34. The petitions are accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
30.08.2022

PA(SS)

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