

08.08.2022
Sl.No.8(SL)
srm

W.P.A. No. 10873 of 2022

Shyamal Sarkar

Versus

The State of West Bengal & Ors.

Mr. Debashis Banerjee,
Mr. Kajal Biswas,
Mr. Supreem Naskar

... for the Petitioner.

Mr. Amitesh Banerjee,
Mr. Suddhadev Adak

...for the State-respondents.

Affidavit-of-service is taken on record. Despite service, none appears on behalf of the respondent No7.

A preliminary report has been filed by the Superintendent of Police, Islampur Police District, pursuant to the direction of this court. The same is taken on record.

Perused the report. It appears that the allegation of withdrawal of Rs.37,000/- by a civic volunteer/the respondent No.7 could not be ascertained by the police authorities, as yet. On the basis of the allegation of the petitioner against the respondent No.7, namely Debabrota Sikdar and the In-Charge of Kanki Outpost, the said persons have been removed from their posting at Kanki Outpost.

The allegation of the petitioner that he was a vegetable seller and had gone to his relative's house at Kanki, was found to be incorrect. The enquiry revealed that the petitioner had gone to Kanki to open an office to run a business for placement of unemployed youth, abroad. The enquiry further revealed that the petitioner could not produce the bank statement in support of his allegation that the civic volunteer had withdrawn Rs.37,000/- on the date of the incident. The enquiry was made by the Superintendent of Police, Islampur Police District. The petitioner appeared before the authority. After ascertaining the facts, the petitioner was asked to wait outside. The petitioner was called for a further discussion on the issue but the petitioner had already left the office of the Superintendent of Police without any intimation. The petitioner was accompanied by a learned Advocate. The learned Advocate filed a statement before the Superintendent of Police on July 15, 2022 indicating that the petitioner had left without intimating him, as well.

The authority directed the bank to submit the CCTV footage of the ATM Kiosk, from which the alleged withdrawal was made. The bank authorities replied that the transaction, if at all, occurred at a micro ATM Centre.

The physical cash was normally handed over to the customer by local business correspondence-BC/Merchant in rural areas. Hence, CCTV footage may not be available as all vendors did not install CCTV cameras at their shops. However, the police authorities have asked for the exact location of the CSP where the disputed transaction had been executed. Name and contact details of the BC agent, Switch log, Micro ATM terminal logs and BC declaration letter have been asked for, in order to confirm how the cash was issued. The bank authorities had been approached time and again.

It appears that there are criminal cases pending against the petitioner, namely, Gangnapur Police Station Case No.128 of 2021 dated July 23, 2021 under Sections 420/406/323/506/120B of the Indian Penal Code and Gangnapur Police Station Case No.124 of 2022 dated May 4, 2022 under Sections 498A/406/34 of the Indian Penal Code.

The records of the Kanki Outpost were called for. The In-Charge of the Kanki Outpost was interrogated and it was revealed that one Nirmal Kumar Mondal had made a complaint before the Kanki Outpost on May 30, 2022 about his wife having left the house upon being misled by the petitioner. She accompanied the petitioner and others

with the expectation of a job of a receptionist. A general diary was registered. The tower location of the petitioner, as provided by the said Nirmal Kumar Mondal, was identified and it appears that the wife of Nirmal Kumar Mondal was in the car with the petitioner and others. When the car was stopped certain altercations took place. The petitioner was driving the car. All persons were taken to Kanki Outpost. The entire incident was diarised. The petitioner and one Subodh Sarkar were arrested to be prosecuted under Section 290 of the Indian Penal Code. The said Nirmal Kumar Mondal and his wife returned on their own with a written declaration, which was also diarised. On the same day, one Biswajit Biswas, learned Advocate of Islampur Court went to Kanki Outpost and prayed for bail. He offered surety for both and the arrested persons, were released on PR bond.

There are allegations against the petitioner, which are matters of investigation. Hence the preliminary report filed before this Court does not, prima facie, support the allegation of overt act of the police, illegal detention of the petitioner and withdrawal of Rs. 37,000 from the petitioner's account.

Under such circumstances, this Court is of the view that the allegation of alleged illegal detention has been

somewhat enquired into and ascertained by the Superintendent of Police, Islampur Police District. The allegation of withdrawal of RS.37,000/- is under enquiry.

The writ petition is disposed of with a direction upon the Superintendent of Police, Islampur Police District to complete the enquiry with regard to both the aspects of illegal detention and withdrawal of Rs.37,000/- by the respondent No.7, as alleged by the petitioner. The report filed today is a preliminary report. A further enquiry is required, in order to ascertain the process by which the petitioner and Subodh Sarkar had been arrested and then released on PR bond. The time gap between the two incidents of arrest and release are to be ascertained. The petitioner shall be called for further questions in the aid of such enquiry. The civic volunteer and in-charge Kanki outpost must be questioned again. The issue with regard to the allegation of withdrawal of Rs.37,000/- shall be probed further. Whether the money was actually handed over to the respondent No.7/civic volunteer or not, has to be ascertained. The petitioner shall identify the ATM counter and the persons involved in the transaction.

The petitioner further alleges that the Aadhar Card, and Passport were seized by the In-Charge of Kanki Outpost and those have not been returned by the police

authorities. This is a serious allegation. All these angles will be looked into by the Superintendent of Police, Islampur Police District. A final decision shall be taken and an enquiry report shall be prepared and supplied to the petitioner and the others involved in the incident. If the civic volunteer and In-Charge of Kanki Outpost are found to have acted contrary to law, necessary steps shall be taken against them. The entire exercise shall be completed within three months. The court reposes faith in the authority.

The writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)