

S/L 215 (ML)
26.08.2022
Court. No. 19
GB

WPA 15533 of 2022

Ali Hossain Mallick
VS
The State of West Bengal & Ors.

*Mr. Soumen Bhattacharjee,
Mr. Manabendranath Bandyopadhyay.*

...for the Petitioner.

*Mr. Amitesh Banerjee,
Mr. Tarak Karan.*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner prays for a mandamus upon the respondents and their men and agents to show cause as to why appropriate steps shall not been taken by the investigating agency, against the FIR named accused persons. Further prayer is that, the investigation be handed over to the CID.

The petitioner submits that the police authorities had wrongly proceeded with the investigation on the assumption that the death of the victim (petitioner's brother) was due to a road accident. As the police authorities proceeded on such basis, the investigation was flawed and had been conducted with a closed mind. According to the petitioner, the provisions of Section 302 of the Code of Criminal Procedure were squarely applicable in this case.

The petitioner's specific complaint is that the petitioner's brother had been murdered by one Pinki Boxi and some others. Further allegation is that no arrests have been made.

A detailed police report has been filed before this Court. It appears that the FIR was lodged on the basis of the complaint of the petitioner, and Panchla Police Station Case No.37 of 2022 dated February 11, 2022 under Section 302 of the Indian Penal Code was started. No other section of the Indian Penal Code had been incorporated in this case, except Section 302.

One Dr. Bibhuti Santra, medical officer of Kulai Rural Hospital examined the deceased initially and declared him dead. The medical officer accordingly submitted a written requisition to Panchla Police Station and over that, Panchla Police Station UD Case No.07 of 2022 dated February 11, 2022, had been started.

The body of the victim had been taken by the petitioner to the medical officer of Kulai Rural Hospital, for examination. The first opinion was that the death was the result of a RTA (road traffic accident) and the cause of death should be determined after post mortem examination.

Mr. Sambhu Nath Karmakar, the enquiry officer examined the body in the presence of the petitioner and other witnesses, prepared the surathal report, which was duly signed by the witnesses. He sent the body to the Superintendent of Uluberia Sub-Divisional Hospital for postmortem examination. In the postmortem report, the medical officer, Dr. Soumya Roy opined that the death was due to the effect of head injuries, antemortem in nature. Viscera was preserved for chemical examination. Blood was preserved for matching. The motorcycle, which was being

driven by the deceased was seized for the purpose of investigation.

Thereafter, on the complaint of the petitioner, Panchla Police Station Case No.37 of 2022 dated February 11, 2022 was registered under Section 302. The investigation was thereafter handed over to S.I., Shantanu Giri. A prayer was sent to the Howrah Rural District, for deputation of a forensic team for examination of the place of occurrence. A team from the State Forensic Science Laboratory, led by Dr. Chitrakshya Sarkar, Assistant Director, State Forensic Science Laboratory, Kolkata went to the spot, examined the place of occurrence, examined the vehicle and opined that the damage of the motor cycle, indicated that there had been a road traffic accident, when the vehicle was travelling from North to South and was being driven in a rash and negligent manner at a considerable high speed. Such report is annexed to the instructions filed by the police.

Some exhibits were collected by the Assistant Director of State Forensic Science Laboratory from the place of occurrence and the surrounding areas, for examination. Samples had been sent to the Director of State Forensic Science Laboratory, Kolkata for examination and expert opinion. The expert opinion is awaited. A prayer was also sent by the Investigating Officer before the India Meteorological Department, Alipore, Kolkata for information with regard to the humidity range, visibility range and weather condition on the date and time of the incident. The Regional Meteorological Department, Kolkata sent the

weather report and he reported that the humidity range between 12 hours IST of February 10, 2022 to 8.30 hours of February 11, 2022 was 89% to 96%. The visibility range was 500 metres to 2 Kms. The weather condition on February 11, 2022 was foggy, but the sky was visible. Weather was partially misty and partially hazy.

The Investigating Officer met Dr. Bibhuti Santra, the medical officer of Kulai Rural Hospital for further opinion and it was opined that the injuries found during the primary physical examination of the deceased was indicative of a road traffic accident. There were no signs of gunshot, burns, strangulation, incised or punctured wounds. The Investigating Officer consulted the Autopsy Surgeon, Dr. Soumya Roy and collected his valuable opinion. The deceased experienced head and chest injuries which could occur in case of a road traffic accident. No gunshots, burns, strangulations, incised or punctured wounds were noted over the body of deceased. Injury was noted over the right fronto-temporal region of the scalp and skull along with right maxilla, as was mentioned in the postmortem report. There was no indication of physical assault.

Under such circumstances, this Court finds that the police authorities have progressed in the manner required. The petitioner has not produced any document to counter the findings, of the doctor and the contents of the postmortem report. The opinion of the autopsy surgeon is before the Court. Just because the petitioner feels that the investigation was not conducted in a proper manner, the

same cannot be a ground for transfer of the investigation to the CID. It is not for the Court to dictate terms to the investigating agency, unless there are blatant irregularities, illegalities, arbitrariness or failure in discharge of duty by the investigating agency. There are no allegation of bias and it is not a case where a very highly placed official or an influential person, is involved. In any event, the writ Court cannot monitor or regulate an investigation. Moreover, the investigation is not yet over and the police authorities are awaiting the opinion from the forensic department.

Under such circumstances, the prayer of the petitioner for transfer of the case, to the CID is rejected.

If the petitioner wants to give further statements to the police, the petitioner shall meet the investigating agency along with all relevant documents and witnesses. Statements of the petitioner and other relevant witnesses, shall be recorded under Section 161 of the Code of Criminal Procedure. Such statements and documents shall be a part of the investigation.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)