

29.07.2022
Sl.No.6(sl)
sn

W.P.A. No. 16904 of 2022
Md. Wakar Yunus @ Md. Wakar Yumer and Anr.
Versus
The State of West Bengal & Ors.

Mr. Kishore Dutta..Sr.Adv.
Mr. Ayan Banerjee
Mr. Sandip Chakraborty
Mr. Kaustav Das

... for the Petitioners.

Mr. Subhabrata Datta
Mr. Banibrata Datta

...for the State-respondents.

This writ petition has been filed for a direction upon the respondents to produce CCTV footages and registers of Gazole toll plaza and Surjapur toll plaza dated June 15, 2022, June 16, 2022 and June 17, 2022. Further prayer for quashing Gazole Police Station Case No. 473 of 2022 dated June 27, 2022 under Section 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985(hereinafter referred to as NDPS Act), has been made.

The learned advocate for the petitioners submits as follows:-

a) That the contents of the FIR do not disclose commission of any cognizable offence by the petitioners, as no recovery had been made from the petitioners.

b) That the facts narrated in the FIR appear to be inconsistent and there are several missing links.

c) Proceedings based on such an FIR would cause miscarriage of justice, inasmuch as the narcotic substances were recovered from the vehicle after forty four hours from the detention of the petitioners.

d) The liberty of the petitioners could not be curtailed on the basis of the aforementioned FIR, as the alleged recovery of nine packets of brown sugar from the vehicle was done after forty four hours from the arrest of the petitioners, which was a false and concocted story.

e) The police authorities had detained the vehicle for more than a day and the recovery was made thereafter, allegedly on the confessions before the police officers. Such statements during interrogation were not admissible in evidence.

f) The FIR does not disclose why the search of the vehicle did not take place at the time of apprehension of the petitioners.

g) The packets of brown sugar were implanted in the vehicle in order to implicate the petitioners in the offence, which was never committed by them.

h) Finally, the CCTV footages and register of the toll plazas must be preserved for the purpose of investigation as the petitioners contend that the toll plaza was crossed by them in the early morning of June 16, 2022.

i) That the recovery was made in the absence of independent witnesses.

j) Apprehension of the third accused person from Surjapur toll plaza was false as the said person was apprehended from Hotel Kalinga at Malda, and the CCTV footages of the said hotel must also be seized.

Mr. Datta, learned advocate for the State respondents submits that the investigation is at its initial stage. That the application for bail has been rejected. That the FIR discloses cognizable offences. Recovery of commercial quantity of brown sugar was made from the vehicle.

Mr. Kishore Dutta, learned senior advocate appearing on behalf of the petitioners submits that even if the bail was rejected, the proceedings under Article 226 of the Constitution of India could be maintained. Learned further submits that the parameters laid down in the decision of ***Bhanjanlal Vs. State of Hariyana, reported in AIR 1992 SC 604*** squarely covers the instant investigation and the Writ Court must intervene.

Having heard the learned advocates for the respective parties, this Court is of the view that Gazole Police Station Case No. 473 of 2022 was registered on June 17, 2022 and the investigation is at its initial stage. The FIR discloses commission of a

cognizable offence. From the interrogation of the accused, it was revealed to the police authorities that the packets of brown sugar were hidden at a particular place in the vehicle. The accused persons led the police to the said vehicle and indicated the place. They are from Imphal and Manipur and there does not seem to be any reason why the investigation would have been registered falsely.

There is no apparent enmity or connection between the accused persons and the police. There is no evidence of mala fide at this stage either. Moreover, the Court is of the view that in order to decide whether the investigation was mala fide, the evidence collected and the statements recorded during investigation are relevant factors to be considered. Such stage has not yet arrived at.

The discrepancies pointed out in the FIR cannot be decided at this stage and the petitioners are always at liberty to raise such issues at the appropriate stage, before the learned jurisdictional Court.

The parameters stated in the decision of Bhajanlal (Supra) for quashing of an FIR, are as follows:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

This Court is of the view that at this stage, the above parameters have not been satisfied and there is no question of quashing the investigation. This is not a case in which the allegations made in the FIR even if there are taken at their face value and accepted in their entirety, do not prima facie

constitute any offence or make out a case against the accused persons. There is no indication of any malice or vengeance on the part of the police authorities. With regard to the prayer for preservation of CCTV footages and registers of the toll plazas, for the relevant dates, similar prayer had already been made before the learned Special Judge, 3rd Court at Malda under the NDPS Act. Thus, these issues will also be decided by the learned Court below, expeditiously.

The observations made in this order shall not prejudice further steps to be taken by the parties. The observations are only for the purpose of disposal of the writ petition.

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.)