

24.11.2022
Court No.13
Item No.6
AP

WPA 17371 of 2022

**Uttam Mondal
Vs.
The State of West Bengal & Ors.**

Mr. Avik Ghatak
Ms. Afreen Begum

... For the Petitioner.

Mr. Wasim Ahmed
Mr. Sk. Md. Masud

... For the State.

Mr. Tanmay Choudhury
Mr. Ritoprita Ghosh

... For the intervening party/Joydeb Khan.

The investigating officer is present in Court.

A Memo of Evidence is submitted before this Court dated 24th November 2022 indicating that the warrant of arrest was already pending against the accused Joydeb Khan. The grounds for opposing the bail are also mentioned.

The accused Joydeb Khan has been granted anticipatory bail by a Division Bench of this Court on 7th November 2022. The order of the Hon'ble Division Bench does not reflect that the factum of warrant of arrest having been issued against the applicant was at all mentioned before the Court by the investigating officer.

This Court finds that charge sheet has been filed in the matter inter alia under Section 306 of the Indian Penal Code.

This Court finds that the conduct of the investigating officer in the instant matter rather

suspicious. The Court's mind is not free from doubt that the IO's conduct may have concealed the truth and has lead to the bail and lighter sections for the accused in general and the said Joydeb Khan in particular.

The charge sheet has been filed on the basis of the post mortem report that there were no external injuries. There is some evidence before this Court that the child was confined inside the brick kiln for some days. Sums of money were due and owing by the child's parents to the said Joydeb Khan, owner of the brick kiln. The story of a young child committing suicide by hanging is not believable.

The Commissioner of Police, ADPC shall conduct an enquiry in this matter and ascertain as to whether at all the factum of issuance of warrant of arrest was at all brought to the notice of the Division Bench in CRM(A) 4924 of 2022 on 7th November 2022. The entire investigation by the IO and charge sheet shall be reviewed by the S.P.

Counsel for the petitioner submits that there is need for further investigation into the matter since certain sections being relating to grievous hurt have not been included.

Under normal circumstances, the writ petitioner would have been required to approach the Magistrate for further investigation under Section 173(8) of the CrPC.

This Court, however, in exercise of extraordinary power under Article 226 of the Constitution of India is inclined to order for further investigation.

Further investigation shall be conducted by a sufficiently senior officer to be nominated by the Commissioner of Police, ADPC.

The investigating officer shall be entitled to, if necessary, file supplementary charge sheet. The statements of all concerned shall be re-recorded, if necessary.

Since the accused Joydeb Khan is already on bail, in the event of any further evidence or any other circumstances, the police as well as the petitioner shall be entitled to apply for cancellation of his bail.

The personal presence of the investigating officer is dispensed with.

With the aforesaid directions, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)