

4th August, 2022
(D/L No.30)
(SKB)

**W.P.A. 17739 of 2022
(Via Video Conference)**

Irfan Ansari and others
Versus
The State of West Bengal and others

Mr. Siddharth Luthra,
Mr. Kallol Mondal,
Mr. Rajdeep Majumdar,
Mr. Ayan Bhattacharya,
Mr. Moyukh Mukherjee,
Mr. Vikas Singh,
Mr. Rachit Lakhmani
... for the petitioners.

Mr. Anirban Ray, Id. G.P.,
Mr. S. G. Mukherjee, P.P.,
Mr. Rudra Nandi, A.P.P.
Mr. Arijit Chakrabarti,
Mr. Arko Nag,
Mr. D. Ghosh,
Ms. Munmun Ganguly
... for the State.

Mr. Krishnaraj Thakkar,
Mr. Koustav Bagchi,
Ms. Priti Kar
... for the Intervenor.

Mr. Billwadal Bhattacharyya,
Id. Asst. Solicitor General,
Mr. Ayanabha Raha
... for the C.B.I.

Three of the four petitioners before the court were arrested on 30th July, 2022 from Panchla, Howrah. These petitioners remain in custody while the fourth petitioner is presently in Delhi. The car in which the three petitioners were travelling, was intercepted by the West Bengal Police at Ranihati, Howrah on the way to

Jharkhand. The West Bengal Police found Rs.48.98 lacs in cash in the vehicle. The petitioners were booked under the provisions of The Indian Penal Code and The Prevention of Corruption Act, 1988.

The petitioners now seek transfer of the investigation to an independent agency which is outside the influence and control of the State and a mandamus on the Director of the Central Bureau of Investigation to forthwith take over the investigation of the case from Panchla Police Station, Howrah. The petitioners also pray for a restraint on the State and its agents and servants from continuing with the investigation.

The case sought to be made out on behalf of the petitioners by learned counsel is that due process was not followed in detaining the three petitioners. Counsel submits that the West Bengal Police did not have jurisdiction to arrest the three petitioners. Counsel also refers to newspaper articles and comments made on Twitter by leaders of the ruling party of the State and submits that the petitioners are at risk of a biased investigation. Counsel submits that the ruling party in the State is attempting to make political mileage from the incident.

The learned Government Pleader appearing for the State hands up a document to show that the FIR was uploaded on 1st August, 2022. Counsel also refers to

the relevant factual details of the matter including the fact that the first 'O' FIR was lodged in Argora Police Station, Ranchi by the Jharkhand Police and was followed up by the West Bengal Police, more specifically the Superintendent of Police, Howrah (Rural).

Mr. Krishnaraj Thakkar, learned counsel appearing online submits that he is representing the complainant one Kumar Jaimangal alias Anup Singh, a member of the Jharkhand Legislative Assembly, who lodged the complaint against the petitioners with the Officer-in-Charge of Argora Police Station, Ranchi. Counsel submits that the complainant is a necessary party who is required to be heard and should have been made a party to the writ petition.

The prayer in the writ petition is for transfer of the pending investigation to an independent agency, simplicitor. The consequential prayer is for a restraint on the State authorities to keep their hands off the investigation. Hence, it has to be seen whether the petitioners have made out a case for seeking this relief from a writ court under Article 226 of the Constitution of India.

The social media and the newspaper reports express the views of certain political leaders on the arrest of the petitioners. Although unwarranted, these comments alone are not sufficient for seeking a prayer

for transfer of the investigation. For a relief of transfer of an investigation to the Central Bureau of Investigation or any other agency for that matter, the court has to come to a considered view that the person at the centre of investigation is faced with a real and imminent threat of an unfair and biased investigation. The transfer of investigation cannot certainly be for the asking or on request of the accused. This point was conclusively decided by the Supreme Court in *Arnab Ranjan Goswami Vs. Union of India and others* reported in (2020)14 SCC 12 as also in *Romila Thapar and others Vs. Union of India and others* reported in (2018)10 SCC 753. The Supreme Court opined that accused persons cannot choose as to which investigating agency must investigate the offence committed by them.

Second, the investigation is admittedly at a nascent stage, having commenced from 31st July, 2022. We are today on 4th August, 2022.

The writ petition also does not contain any particulars as to alleged infirmities of the investigation undermining the confidence of the court and warranting intervention.

Therefore, it was incumbent on the petitioners to establish that the investigation requires to be continued by another investigation agency and for reasons stated or proved before the court.

With regard to the objection taken to the point of jurisdiction on behalf of the petitioners, the car in which the petitioners were travelling was intercepted at Ranihati, Howrah. Sections 177 and 178 of the Code of Criminal Procedure, 1973 make it clear that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Further, it appears that the points taken on the absence of due process before this court were also urged before the jurisdictional Magistrate on 2nd August, 2022 when the petitioners were present in court. The challenge to the procedure was rejected. This averment is notably absent in the present writ petition. Reference in this context made to the *K.D. Sharma Vs. Steel Authority of India Limited and others* reported in (2008)12 SCC 481, on the disentitlement to relief by reason of a petitioner not coming to a court of equity with clean hands.

The ground taken with regard to the merits is also arguable. Although the petitioners claim to be carrying Rs.49 lakhs avowedly for purchase of sarees for the World Tribal Day Festival on 9th August, 2022, they were intercepted with only the cash and without the products purchased.

Most significantly, the petitioners have an alternative remedy available under criminal law

including under Sections 438 and 439 of the Cr.P.C. Admittedly, the petitioners have not invoked any such remedy and instead have come to the writ court for relief. In *Arnab Goswami Vs. State of Maharashtra* (2012)2 SCC 427, the Supreme Court noted the invocation of the remedy of bail under Section 439 of the Cr.P.C.

This court finds no basis to interfere or to pass any orders as prayed for in view of the above reasons.

Needless to state, Crime Investigation Department should continue the investigation in an independent fair and unbiased manner with due promptitude.

W.P.A.17739 of 2022 is accordingly rejected and dismissed without any order as to costs.

(Moushumi Bhattacharya, J.)