

10.8.2022  
Sl.No.7  
sn

**W.P.A. No.17919 of 2022**

**Amzed Sk.**

**Versus**

**The State of West Bengal & Ors.**

**Mr. Joy Chakraborty**

**Mr. Sandip Dinda ... for the Petitioner**

**Mr. Subhabrata Datta**

**Mr. Banibrata Datta ..for the State**

The petitioner alleges custodial torture upon his son, one Rafique Sk. He further alleges that the S.D.P.O. and Office-in-Charge, Canning Police Station also tortured him by calling him to the police station under a false pretext of an ongoing investigation.

It is the specific contention of the petitioner that he was at first arrested by Canning Police Station on July 13, 2022. Canning Police Station Case No.494 of 2021 dated November 21, 2021 had been registered under Section 302/34 and 212/201 of the Indian Penal Code and 25/27/35 of the Arms Act.

The petitioner prays that the CCTV footages dated July 27, 2022, July 28, 2022 and July 30, 2022 of Bakultala Police Station, and Canning police station, be preserved. These CCTV footages would be evidence in support of the claims of custodial torture

of the petitioner's son and also the torture upon the petitioner.

The State respondents have filed two reports, one from SDPO, Canning and the other from the Officer-in-Charge, Bakultala Police Station.

From the report filed by the SDPO, Canning, it appears that the petitioner's son Rafique Sk is a history sheeter vide Canning PS History sheet No. 01/18. He is also accused in the following cases:-

i) Canning P.S. Case no. 24/2003 dt.23.2.03 u/s 399/402 IPC and 25/27/35 Arms Act,9(b)I.E. Act.,

ii)Canning P.S.Case No.492/14 date 28.09.14 u/s 489B/489C IPC

iii)Canning PS Case no.578/18 dt.17.09.18 u/s 115/120(B) IPC & 25/27 Arms Act.

iv)Canning P.S. Case No.455/20 Dt.10.07.20 u/s 341/325/34 IPC

v)Canning P.S. Case No.537/16 dt.19.8.16 u/s 392/397 IPC etc.

It also appears that in connection with Canning Police Station Case No. 494 of 2021, the petitioner was trying to evade police arrest for a long time. Against him, proclamation and attachment under Section 82 and 83 of the Code of Criminal Procedure was issued by the learned Additional Chief Judicial Magistrate, Alipore. The proclamation

and attachment was stayed by this court in a criminal revision

On July 13, 2022, on the basis of a tip off, Rafique Sk was arrested from Hingalganj Police Station in the early morning at about 2-30 hours. He was produced before the learned Additional Chief Judicial Magistrate, Alipore on July 13, 2022.

On July 27, 2022, a team of police officials of Bakultala Police Station went to Canning Police Station and submitted proper requisition for police assistance for investigation in connection with Bakultala Police Station Case No.201 of 2022 dated July 12, 2022 which was registered against Rafique Sk under Section 399 and 402 of the India Penal Code and 25(i)(a)/27 of the Arms Act.

On the direction of the Court, police custody of Rafique Sk was taken from Canning Police Station to the Bakultala Police Station.

It also appears that a mass petition had been received by the SDPO, Canning, against the petitioner. The villagers were living in fear that the petitioner may attack them at any time. The petitioner continuously terrorized the villagers. They had alleged that the petitioner was in possession of arms and ammunition.

On July 30, 2022, on receipt of further information about the activities of the petitioner in

the village which had given rise to law and order problems, S.I. Ranjit Chakraborty was directed to attend the place, and restore peace amongst the villagers. The villagers informed the police authorities that the situation was very tense as the local villagers were annoyed with the activities of the petitioner and his son, especially because the presence of the petitioner's son was captured in the CCTV footages relating to the murder of their leader Moharam Sk.

Finding no other alternative, S.I. Ranjit Chakraborty apprehended the petitioner under Section 151 of the Code of Criminal Procedure and brought him to the Police Station, in order to restore peace. After enquiry, the petitioner was released upon furnishing PR bond.

The specific contention of the SDPO, Canning is that the petitioner's son and the petitioner have criminal antecedents and the petitioner's son is in judicial custody for the offence of murder and use of arms and ammunition. The writ petition has been filed only to prejudice the ongoing investigation and trial. The cases against the petitioner are as follows:-

(i) Canning PS Case No. 5/2003 dt. 09.01.03  
u/s147/148/149/448/427/323/324/326/354/506  
/34 IPC

(ii) Canning PS Case No. 24/2003 dt. 23.02.03 u/s 399/402 IPC and 25/27/35 Arms Act, 9(b) I.E. Act.,

(iii) Canning PS Case No. 352 Dt. 04.04.10 u/s 384/487/394/325/34 IPC

(iv) Canning PS Case No. 364 dt. 09.11.11 u/s 147/148/447/448/325/326/307/506/34 IPC and

(v) Canning PS Case No. 394 dt. 16.11.11 u/s 25/27 Arms Act etc.

The Officer-in-Charge, Bakultala Police Station has filed a report indicating that the petitioner's son is in judicial custody in Baruipur Central Correctional Home in connection with Canning Police Station Case No.494 of 2021.

The Investigating Officer submitted a prayer before the learned Additional Chief Judicial Magistrate, Baruipur for permission to interrogate Rafique Sk in jail. Such prayer was allowed.

On July 25, 2022 interrogation of Rafique Sk was done in the presence of the Controller of Baruipur Central Correctional Home.

On July 26, 2022, the Investigating Officer submitted a prayer before the learned Additional Chief Judicial Magistrate, Baruipur, for showing arrest and 7 days police remand of Rafique Sk.

On July 27, 2022 the learned Additional Chief Judicial Magistrate, Baruipur considered and

allowed the prayer of the investigating officer and Rafique Sk was remanded to police custody for two days under the Bakultala Police Station. The officers of Bakultala Police Station went to Canning Police Station and Rafique Sk was taken in police custody for two days. During police custody at Bakultala, Rafique Sk was medically examined at the Government Hospital and the guidelines of Hon'ble Apex Court was maintained.

The police authorities have produced records before this Court including prescription/emergency ticket issued by the Medical Officer, Sreekrishna Rural Hospital, Nimpith, Joynagar-II. No abnormality was detected and the petitioner was declared clinically fit after examination.

The petitioner prayed before the learned Magistrate for bail, on July 29, 2022. Allegation of torture in the police custody was made.

The learned Magistrate by an order dated July 29, 2022 indicated that from the medical report submitted by the investigating officer there was no sign of torture. At that stage, it was not possible for the learned Additional Chief Judicial Magistrate to opine as to whether the guidelines of the Hon'ble Apex Court in D.K. Basu's case had been followed.

Having considered the gravity of the offence and the early stage of investigation, prayer for bail of

the accused was rejected. The Case Diary was called for and the next date was fixed.

The learned Magistrate has already considered the issue and is already in seisin of the matter. The point of custodial torture has already been raised before the learned Additional Chief Judicial Magistrate. This Court cannot allow a parallel prayer to be made by way of a writ petition in the facts and the background of the case.

With regard to the alleged torture on the petitioner by the Canning Police Station, this Court is of the view that the petitioner may approach the Superintendent of Police, Baruipur Police District by filing a representation. If such application is made, the same shall be disposed of, in accordance with law.

This order shall not affect the pending proceeding before the learned Additional Chief Judicial Magistrate and shall not be considered as a protective order either in favour of the petitioner or his son with regard to the pending cases and investigations.

The prayer for preservation of the CCTV footages can also be made before the learned Additional Chief Judicial Magistrate, who is in seisin of the matter.

This writ petition is 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.)**