

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Original Side)

APO 22 of 2022
With
WPO 629 of 2021
IA No: GA 1 of 2022

Reserved on: 10.06.2022
Pronounced on: 15.06.2022

Kasturi Mukherjee (Bandapadhya)

...Petitioner

-Vs-

State of West Bengal and Ors.

...Respondents

Present:-

Mr. Bhaskar Prasad Banerjee,
Mr. Parashar Baidya, Advocates
... for the petitioner

Mr. Amitesh Banerjee, Sr. Standing Counsel
Mr. Nilotpal Chatterjee,
Ms. Ipsita Banerjee
... for the State

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 23rd of November, 2021 whereby WPO 629 of 2021 has been disposed of with certain observations.

2. Appellant had approached the Writ Court with the plea that her two sons, namely, Saayak Mukherjee, aged about 30 years and Kinjal Mukherjee, aged about 24 years had died on 10th of July, 2021 in an allegedly shown road accident. It is stated in the petition that the death of both her sons was shrouded with mystery and suspicion and it was difficult to digest that the death took place due to the road accident. The appellant

apprehended some foul play behind the death. The police had registered the offence under Sections 279/304A/338/427 of IPC and subsequently, learned CJM had allowed the prayer for amendment of section and the case was investigated by Fatal Squad Traffic Police (FSTP). Finding that conduct of the IA of the case to be doubtful, the petitioner had approached the learned Single Judge by way of the writ petition with a prayer to transfer the investigation to the Criminal Investigation Department (CID).

3. Learned Single has found the case to be premature though the factum of filing the charge-sheet has been noted. Learned Single Judge has disposed of the petition by directing the CJM to decide the petitioner's application within a time bound period.

4. Submission of learned Counsel for the petitioner is that even after filing of the charge-sheet, the issue can be examined by the learned Single Judge and that various lapses in investigation which were mentioned in the writ petition have not been considered by the learned Single Judge and the issue of transfer of investigation to the CID can only be decided by the Writ Court.

5. Opposing the prayer, learned Counsel for the State has submitted that since the charge-sheet has been filed, therefore, the petitioner has the remedy of raising objection before the concerned Magistrate who can duly examine the grievance of the petitioner.

6. We have heard the learned Counsel for the parties and perused the record. A perusal of the writ petition reveals that the appellant had pleaded in detail, the reasons of suspicion that it was not a case of accident. The writ petition contains detailed pleading of suspicion about contradictory website information, non-consideration of video clips circulated in various domains, stunning reaction from police when the clips were shared, evidence contrary

to the version of the police which says that surviving son was critically injured to survive the said accident, inaction of the police to preserve the video circulation and to confiscate the video from the original maker, the version reported by the by-standards, the condition of the sons' vehicle and the helmet without any mark of accident, certain alleged misrepresentations on the part of the police, unexpected persons getting the news of the accident, non-preservation of material exhibits of the alleged accident, non-preservation of mobile call details of the deceased sons, non-identification of the bodies of the sons, suspicion of the estranged husband, etc. The order of the learned Single Judge reflects that none of the above plea has been considered. Considering the stage of the case, we are also of the opinion that the writ petition was not premature. That apart, the prayer for transferring the investigation to the CID can only be decided by the Writ Court. It has been pointed out by the learned Counsel for the appellant that meanwhile he has also come in possession of some more relevant documents.

7. In these circumstances, we are of the opinion that the issue ought to have been examined by the learned Single Judge instead of disposing of the petition by a short order. Thus, we set aside the order of the learned Single Judge and remand the matter back to the learned Single Judge for fresh adjudication in accordance with law.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
15.06.2022

PA(RB)

(A.F.R. / N.A.F.R.)