

28.07.2023
Court No.13
Item No.3
AP

WPA 1226 of 2022

**Surja Majhi
Vs.
The State of West Bengal and Ors.**

Mr. Lakshmi Kanta Bhattacharya

... For the petitioner.

Mr. Amitesh Banerjee
Ms. Ipsita Banerjee
Mr. Suddhadev Adak

... For the State.

1. The Court has received a report from the Judicial Magistrate, 3rd Court, Diamond Harbour dated 12th July, 2023 and the same is taken on record.

2. It appears from the report in no uncertain terms that the mobile phone was switched on during the period it remained sealed in official custody.

3. The seal has been opened nearly after it was seized. Under such circumstances, the mobile phone cannot have any battery power left. Despite whereof there was 10 percent battery available in the mobile phone when it was opened under orders of this Court. For the reasons far too obvious, none of the messages for demands of sums of money and in default foisting of NDPS cases on the petitioner, are available in the mobile phone. The last message in the phone is dated 25th May, 2022. This Court, therefore, is of the view that the mobile phone may have been tampered with before it was opened.

4. Let the phone be sent for forensic examination to the CFSL, Hyderabad to ascertain as to whether any whatsapp messages have been deleted. Any deleted messages in the mobile phone, particularly with the police officials, may be recovered and retrieved by the CFSL.

5. The report of the CFSL shall be placed before the Special Court.

6. This Court is of the view that the petitioner has made out a very strong and prima facie case of the NDPS case being foisted on him. The investigation into the NDPS case is still on. This Court does not wish to interfere with the same.

7. The petitioner shall therefore be released from the custody on the condition that he shall report before the Investigating Officer at least once in two weeks and shall appear before the learned trial court if the trial commences regularly till its disposal. There shall be a further condition that the petitioner shall execute a bond of Rs. 15,000/- and shall produce two sureties of the same value. Satisfaction of the aforesaid conditions shall be ascertained by the Special Court.

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

9. There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)