

16.02.2023
Item No.03
Court No.32
Avijit Mitra

WPA (H) 10 of 2023

In re: An application under Article 226 of the
Constitution of India;

And

Md Sahjad

-vs-

The State of West Bengal & ors.

Mr. Wasim Reza

....for the Petitioner

Mr. Debabrata Chatterjee,

Mr. Simanta Kabir

...for the State

In the present writ petition, it has *inter alia* been averred that the cousin brother of the petitioner namely Md. Rahamatuallah @ Zahid (in short, Zahid) went missing on and from 20th December, 2021. The petitioner informed such incident to the police authorities but no steps were taken. On 19th January, 2023, the respondent no.9 informed the petitioner that on 20th December, 2021, on the instruction of the persons whose names have been stated in paragraph 4 of the petition, Zahid was kidnapped. The petitioner intimated such fact to the respondent no.5 through a detailed representation dated 20th January, 2023 but in vain. Aggrieved thereby, the petitioner has approached this Court.

Mr. Reza, learned advocate appearing for the petitioner submits that no steps have been taken and no investigation has been conducted on the basis of the

complaint. In view of such inaction necessary direction needs to be issued upon the CID authorities for conducting proper investigation. In support of such contention reliance has been placed upon judgments delivered by the Hon'ble Madras High Court in the case of *Ramasamy, Anthonysamy And... Vs. State Rep. By Deputy* on 4th December, 2006 and by the Hon'ble Supreme Court in the case of *Nilabati Behera (Smt) alias Lalita Behera Vs. State of Orissa* reported in (1993) 2 SCC 746.

Per contra, Mr. Kabir, learned advocate appearing for the State submits that though it had been alleged that Zahid went missing on 20th December, 2021, no missing diary had been lodged. The petitioner submitted the first complaint on 20th January, 2023. Drawing our attention to the contents of a report filed on behalf of the respondent no.6, Mr. Kabir submits that the petitioner has approached this Court with untrue statements. On 23rd November, 2021 a complaint was lodged alleging *inter alia* that one Wazeul Khan had been murdered by a group of persons. Such complaint was registered as Sankrail Police Station Case No.1402 of 2021 dated 23rd November, 2021. Upon completion of investigation chargesheet was submitted being 142/2022 dated 15th February, 2022 under Sections 302/120B/34 of the Indian Penal Code. Subsequent thereto, two supplementary chargesheets were also filed being chargesheet No.142(A)/2022 dated 10th May, 2022 and

chargesheet No.142(B)/2022 dated 24th July, 2022 under Sections 25(1B)(a)/27(3)/35 of the Arms Act. Let the report, as produced, be kept on record.

Mr. Kabir submits that Zahid is an accused in the said Sankrail Police Station Case No.1402 of 2021 dated 23rd November, 2021. He could not be arrested and the chargesheet was submitted showing him as an absconder. Zahid Rahemani and Md. Rahamatullah is the same and identical person. Some of the persons whose names have been disclosed in the paragraph 4 of the petition are the witnesses in Sankrail Police Station Case No.1402 of 2021.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

A writ in the nature of *habeas corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person are investigated by a summary procedure. For investigating the death of one Wazeul Khan, Sankrail Police Station Case No.1402 of 2021 dated 23rd November, 2021 was registered and a charge sheet has been filed in the same against Zahid noting that he is absconding. We have been informed that warrant of arrest was also issued against him but till date he could not be arrested. We do not find any material to infer that Zahid had been illegally detained. The judgments upon which reliance have been placed by Mr. Reza are relating to custodial deaths and are distinguishable on facts.

In view thereof, we are of the opinion that no interference is called for.

The *habeas corpus* petition being WPA (H) 10 of 2023 is, accordingly, dismissed.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)