

29-03-2023

ct no. 13

sl. 16

sp

WPA 7796 of 2023

Priyanka Das

-Versus-

The State of West Bengal & Ors.

Mr. Mayukh Mukherjee,

Mr. Prasanta Kr. Saha,

Mr. Abhijit Singh

...for the petitioner

Mr. Amitesh Banerjee, ld. Sr. St. Counsel,

Ms. Ipsita Banerjee,

Mr. Suddhadeb Adak

...for the State

Mr. Falguni Bandyopadhyay,

Ms. Riya Ballav

....for the respondent nos. 7 to 8

Mr. Amitesh Banerjee, learned counsel appearing for the State has produced the seizure list of incriminating material obtained from the principal accused Somenath Bhattacharyya.

There is application for bar licence in the name of Mousumi Bhattacharyya, wife of Somenath Bhattacharyya. There are a large number of other documents relating to a promise of securing jobs at the Kolkata Municipal Corporation.

This Court is, therefore, surprised as to why Somenath Bhattacharyya has not been taken into custody till date.

Mr. Banerjee explains that the principal accused has wholly and completely co-operated with the investigation. Additional sections of the IPC and the Prevention of Corruption Act have also been added and a fair investigation is being undertaken. The need for arrest and detention of the ACP in custody was not felt.

On the question of transfer of investigation from the police under the Barrackpore Commissionerate, Mr. Banerjee submits that given the sincerity of the present Investigating Officer and the dispassionate investigation undertaken, the investigation need not be transferred.

This Court is conscious about the principle of law in vogue that transfer of investigation to another agency is not ordered in a proceeding by an accused person. However, in the instant case the principal accused Somenath Bhattacharyya is an IPS Officer of the rank of an Assistant Commissioner of Police. The faith of the public at large and visible transparency of the investigation must be borne in mind.

The investigation must not only be done fairly and comprehensively but must also be seen so done. The Barrackpore police should not be seen

investigating into the impropriety of one of their own senior officers.

In the above circumstances, in the light of the decisions of the Hon'ble Supreme Court on the issue of investigation into improprieties by police officers, this Court is of the view that the investigation into the subject FIR being Baranagar PS Case No. 680 of 2021 dated 26.11.2021 under Sections 420/406 of the IPC must be transferred to the CID, West Bengal.

Mr. Banerjee, however, has fairly admitted before this Court that the petitioner's husband may have been tortured in course of police custody. The seizure list of articles from the petitioner's husband indicate passbooks and documents of his identity. In writing samples of about 75 persons have also been collected. The same by itself, cannot at this stage justify the further detention of the petitioner's husband Kaustav Das.

This Court's mind is also not free from doubt that the evidence against Kaustav Das or any statements made by him would be questionable in the backdrop of the physical torture inflicted upon him in custody. Kaustav Das shall, therefore, be enlarged on bail forthwith on the following conditions:-

(1) He shall furnish a bond of Rs. 50,000/- (Rupees Fifty thousand only) with two sureties of like amount each, one of whom must be local, to the satisfaction of the ACJM, Barrackpore.

(2) While on bail, the petitioner's husband, Kaustav Das, shall not leave the jurisdiction of the Baguiati Police Station without the prior consent in writing of the new Investigating Officer. He shall report to the Investigating Officer of the CID, West Bengal as and when required.

The CID, West Bengal shall consider registering FIR against the respondent nos. 4 and 5 and the Medical Officer of Jagadish Chandra Bose General Hospital who signed the fitness certificate of Kaustav Das on March 21, 2023.

The aforesaid criminal proceedings shall not in any way, prevent the Commissioner of Police, Barrackpore from initiating departmental proceedings against any of the erring officials referred to in the instant order and the writ petition.

The CID, West Bengal shall conclude the investigation as expeditiously as possible, preferably

within a period of 2 months from the date of receipt of the case diary.

It is expected that a sufficiently senior and experienced officer is nominated by the CID, West Bengal to conduct the investigation.

The Barrackpore Police Commssionerate shall ensure that all case papers, evidence and the case diary is transferred to the CID, West Bengal immediately. The Commissioner shall extend full and complete cooperation to the CID.

The CID, West Bengal shall consider and assess the threat perception to the petitioner as expressed by the counsel and take appropriate steps in this regard.

With the aforesaid observations, the instant writ petition shall stand disposed of.

There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)