

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(PUBLIC INTEREST LITIGATION)
APPELLATE SIDE**

RESERVED ON: 10.04.2023
DELIVERED ON: 27.04.2023

CORAM:

THE HON'BLE MR. ACTING CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA (P) 151 OF 2023

SRI SUVENDU ADHIKARI

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

WITH

WPA (P) 154 OF 2023

AMBOOJ SHARMA

VERSUS

UNION OF INDIA AND OTHERS

WITH

WPA (P) 156 OF 2023

INDRA DEO DUBEY

VERSUS

UNION OF INDIA AND OTHERS

WITH

WPA (P) 162 OF 2023

PRIYANKA TIBREWAL

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

Appearance:-

Mr. Soumya Majumder, Adv.
Mr. Srijib Charkarborty, Adv.
Mr. Anish Kumar Mukherjee, Adv.
Mr. Suryaneel Das, Adv.

**.....For the Petitioner in
WPA (P) 151 of 2023**

Mr. Sabyasachi Chatterjee, Adv.
Mr. Sayan Banerjee, Adv.
Mr. Akashdeep Mukherjee, Adv.
Mr. Badrul Karim, Adv.
Mr. Kiran Sk., Adv.
Mr. Dipankar Das, Adv.

**.....For the Petitioner
In WPA (P) 154 of 2023**

Ms. Priyanka Tibrewal

**.....Petitioner-in-person
In WPA (P) 162 of 2023**

Mr. S.N. Mookherjee, Ld. A.G.
Mr. Anirban Ray, Adv.
Md. T.M. Siddique, Adv.
Mr. Amitesh Banerjee, Adv.
Mr. Nilotpall Chatterjee, Adv.
Mr. Avishek Prasad, Adv.
Mr. Debashis Ghosh, Adv.
Mr. A. Pandey, Adv.

.....For the State.

Mr. Asok Kumar chakraborty, Ld. A.S.G.
Mr. Sukumar Bhattacharya, Adv.

....For the Union of India

Mr. Billwadal Bhattacharya, Ld. D.S.G.I.
Mr. Debasish Tandon, Adv.

.....For the NIA

Mr. Dhiraj Trivedi, Ld. D.S.G.I
Mr. Shailendra Kr. Mishra, Adv.

.....For the CBI

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, ACJ.)

1. The petitioner in WPA 151 of 2023 is a Member of Legislative Assembly of West Bengal and leader of a political party. The petitioner in WPA (P) 154 of 2023, states that he is a social worker and a political activist associated with a particular political party. The petitioner in WPA 156 of 2023 also states that he is a Member of an organization and convener of Ram Navami Sobhayatra rally for the year 2023. The petitioner in WPA 162 of 2023 is appearing in person is an Advocate practicing before this Court and a Member of a political party. Though, there may be a slight variation in the prayer sought for essentially the grievances expressed by all the 4 petitioners are identical. Since WPA 151 of 2023 was the first writ petition which was filed, the same is taken as a lead case. In the said writ petition, the petitioner prays for issuance of a writ of mandamus to direct the Central Bureau of Investigation (CBI) to register an FIR into the acts of violence, arson and communal conflagration at Howrah and Dalkhola on 30th March, 2023 on the occasion of Ram Navami and conduct investigation into the same. The petitioner also seeks for issuance of a writ of mandamus to direct the National Investigation Agency (NIA) to conduct investigation into the use of explosive substances, in the violence, arson and communal conflagration in the said areas on 30th March, 2023 on the occasion of Ram Navami. The writ petition was heard on 3rd April, 2023 and this Court passed the following order.

1. This writ petition styled as a public interest litigation has been filed praying or issuance of a writ of

mandamus to direct the Central Bureau of Investigation to register an FIR into the act of violence, arson and communal conflagration at Howrah and Dalkhola on 30th March, 2023 on the occasion of Ram Navami. The petitioner also prays for issuance of a writ of mandamus to direct the National Investigation Agency to conduct investigation, inter alia, into the use of explosive substances in the violence in the said areas on 30th March, 2023.

2. *The learned Advocate appearing for the writ petitioner has drawn our attention to the representation given by the petitioner to His Excellency The Hon'ble Governor of West Bengal on 30th March, 2023 and to the Hon'ble Union Home and Cooperation Minister, Ministry of Home Affairs, Government of India, New Delhi, which is also dated 30th March, 2023.*

3. *The concern expressed by the petitioner is that violence still continues in the said areas and there is an absolute failure on the part of the State police in bringing the situation under control. It is also pointed out that in certain areas, the internet connection has also been suspended.*

4. *There are other learned Advocates, who also seek to file similar writ petitions but, however, the Court made it clear that they will be heard in the matter so that the multiplicity can be avoided. It is submitted by the learned Advocate that in the procession, fire arms were used and this was not prevented by the State police, which led to lot of innocent people being severely injured.*

5. *The learned Advocate General appearing for the State would submit that the situation is under control and would like to highlight certain other 2 issues such as how the conditions imposed by the Commissioner of Police, Howrah in the licence / permission granted were violated by the groups that joined the procession and also about the cases which have been registered, the arrests already made and statements that have been recorded under Section 161 of the Cr.P.C.*

6. *Let a comprehensive report be filed by the respondents/State covering all aspects with liberty to produce CCTV and video footages on the next hearing date.*

The respondents/State shall ensure that the public of the areas are not in any manner affected by any fresh incident of any violence or arson and the law and order should be kept under control. The safety of the school going children, the residents of the locality and the businessmen should be sufficiently safeguarded.

7. Needless to state that adequate deployment of police force shall be made so that peace and tranquillity prevails in the said areas.

8. Let such report be filed not later than 5th April, 2023 after serving advance copies on the learned Advocates for the parties.

9. List this matter on 6th April, 2023 in the same position.

2. By the above order, a comprehensive report by the respondent / State covering all aspects was directed to be submitted with the further direction to the respondent/ State to ensure with the public of the areas are not in any manner affected by any fresh incidents of violence or arson and law and order should be kept under control. Further, safety of the school going children, the residents of the locality and the businessmen was also directed to be safeguarded. Direction was issued to deploy adequate police force so that peace and tranquillity prevails in the said areas. Though the matter was directed to listed on 6th April, 2023, since the learned Advocate appearing for the writ petitioner mentioned the matter for listing the same earlier than 06.04,2023 on the ground that a supplementary affidavit has been filed by the writ petitioner dated 3rd April, 2023 reporting about the violence which has spread to several parts of the State such as Rishra area of Hooghly District wherein on 2nd April, 2023 violence has erupted and there was severe pelting of stones and hurling of bombs which resulted in several

public who had been severely injured and also there has been death being reported. Further, the situation had deteriorated to the extent that internet service has been suspended in the entire District. Photographs of people injured in the violence at Rishra were annexed to the supplementary affidavit as also the notifications issued by the Government suspending the internet services were appended. The petitioner thus stated that the materials annexed to the supplementary affidavit has come to his knowledge after filing writ petition of the same are necessary for the adjudication of the writ petition and the same ought to be brought on record. The supplementary affidavit was taken on record and copies were served to the learned Advocate General and the learned Advocates appearing for the respondents. On 5th of April, 2023, the matter was heard and the following order was passed.

2. *In terms of the directions made in the above order, report has been filed on behalf of the Commissioner of Police, Howrah Police Commissionerate, report on behalf of C.I.D regarding Shibpur Police Station Case No.113 of 2023, report on behalf of the Superintendent of Police, Islampur 3 and report on behalf of Commissioner of Police, Chandannagar Police Commissionerate. The reports appear to be elaborate along with annexures which are taken on record. The contents of the report will be examined on the next hearing date.*

3. *The issue which has been brought to our notice by the learned counsel appearing for the petitioners as well as the learned advocates, who are granted leave to make submission before this Court and after hearing submission of the learned Advocate General, learned Additional Solicitor General, learned counsel appearing on behalf of the National Investigation Agency, we are of the view that certain directions are required to be issued so as to ensure that Hanuman Jayanti to be celebrated on 6th April, 2023*

is celebrated in a peaceful manner without any untoward incident.

4. *The learned Advocate General has produced before us a copy of the application which the concerned organizing body has to submit before the Joint Commissioner of Police Headquarter, Kolkata for granting 'No Objection Certificate' for conducting meeting or rally or procession. Such form contains 27 conditions, which have been perused by us. We find that the conditions should be more stringent and it appears that the form is a common form for all processions, rallies and meetings and considering the fact that during the Ram Navami festival several incidents had occurred in the neighbouring districts of Kolkata, more stringent conditions have to be imposed.*

5. *First and foremost is the accountability of the persons organizing the rally or procession should be made accountable for any untoward incident and requisite amendments be made in the form. The police authorities are at liberty to restrict the number of participants in the procession so that the procession is taken out with religious flavour without any political affiliations. The police shall ensure that at all vantage points barricades are erected and preferably a common route can be prescribed for the procession to proceed so that the police authorities will be able to control the crowd and prevent any untoward incident. The police shall also have the discretion to restrict the route considering the past events which took place, which are wholly unpleasant. The police authorities are directed to conduct a route march today (5.4.2023) to assure and reassure the public that the police are there to safeguard their interest. In areas where order under Section 144 of the Criminal Procedure Code have been promulgated no rally or procession should be conducted.*

6. *It is stated by the learned Advocate General that the organizations which have applied for permission to conduct procession would furnish the names of their volunteers. In our considered view, the volunteers who may assist the police will not be in a position to control any untoward incident. So the role of the volunteers should be*

made minimal and full details of the volunteers should be collected by the police and they should be given identity cards. Additional CCTV cameras should be installed apart from video graphing the vantage areas through which the procession will be taken through.

7. *It is submitted by the learned Advocate General that as to how more than 160 applications have been received as of now for conduct of the procession. We are informed that a large number of police force has been deployed in those vantage areas to maintain law and order situation. Therefore, considering the largeness of the issue and in order to avoid any breach of peace, we are of the definite view that the State Government should requisition the assistance of paramilitary force from the Central Government. In fact, this was the observation, made by the Hon'ble Division Bench of this Court in the Case of WPA(P) 258 of 2022 dated 15th June, 2022. The assistance of the paramilitary force will definitely help the state police in maintaining the law and order situation 6 apart from assuring the general public that their safety and security will be taken care of.*

8. *That apart, the State will also be at liberty to take appropriate action under the provisions of West Bengal Maintenance of Public Order (Amendment) Act, 1972 as amended by the West Bengal Maintenance of the Public Order (amendment) Act, 2017 wherever it is necessary.*

9. *The purport and scope of this order and direction is to ensure that public are assured and reassured that they will be safe in their homes and they will not be affected by any riotous behaviour of miscreants.*

10. *The Registry of this Court has received a representation from the Additional District and Sessions Judge, Diamond Harbour, South-24 Parganas wherein he has lamented that he is unable to even get requisite police assistance for his family and himself, whose residence is situated in Rishra. This aspect is also to be taken into consideration and it should be ensured that any of these districts which are perceived to be the sensitive areas, the judges of the District Judiciary should be in a position to freely discharge their judicial functions and if there is any request made by the District Judiciary for adequate police*

help or protection to enable them to function peacefully or protection for their family, the same 7 shall be provided by the State without putting any fetters.

11. *It goes without saying that if any of the local people apprehend any breach of peace in their locality and if the same is brought to the notice of the police authorities they should immediately act on such request and ensure that no untoward incident occurs in their area.*

12. *Thus, what is to be highlighted is that “prevention is better than cure”. Therefore, the State police are required to take all steps with the assistance of the paramilitary force or any other central force to prevent any untoward incident so that public are not put to jeopardy. The above directions shall be scrupulously complied with.*

13. *The learned counsel appearing for one of the writ petitioners submitted that in Rishra where rioting took place, stones were pelted from roof tops of the building. Had the intelligence wing of the police department been little more vigilant, such preplanned attack could have been easily been avoided. Therefore, the intelligence wing of State Police shall take all steps be taken to avoid any such pre-planned attacks or violence.*

14. *The above directions shall be scrupulously complied with and action taken report be submitted on the next date of hearing. 8*

15. *Considering the sensitivity of the problem, this Court directs that no person either a political personality or a leader or a common man shall make any statement in public or to the media concerning the festival to be celebrated tomorrow.*

16. *As we have directed the State to make request for deployment of paramilitary forces, the concerned authority of the Central Government shall take expeditious steps in deploying such force since the festival is to be celebrated tomorrow (i.e. 6th April, 2023).*

17. *List this matter on 10th April, 2023 for further consideration.*

3. In terms of the directions issued in the order dated 3rd April, 2023, the reports were filed by the Commissioner of Police, Howrah Police Commissionerate, report on behalf of CID regarding Shibpur Police Station case No. 113 of 2023, report on behalf of Superintendent of Police Islampur and report on behalf of the Commissioner of Police, Chandannagar Police Commissionerate. When the matter was heard on 5th April, 2023 it was stated that Hanuman Jayanti is to be celebrated on 6th April, 2023 and the writ petitioner apprehended violence during the celebration as the violence which erupted during Ram Navami had still not ebbed and therefore, necessary directions were sought for. The learned Advocate General placed before this Court, the copy of the application which the concerned organizations are required to submit for obtaining "No Objection Certificate" for conducting meeting or rally and submitted that 27 conditions had been laid down which are to be complied with by the applicant. On perusal of the 27 conditions we found that the condition should be more stringent as the form appeared to be a common form for all processions, rallies and meeting. Thus, considering the violence which erupted during Ram Navami festival we directed that some stringent conditions should be imposed. Various other observations and directions were made/ issued so that the rally or procession which is organized during the Hanuman Jayanti is conducted in a peaceful manner. The Court also directed that the areas where order under Section 144 of the Criminal Procedure Code had been promulgated no rally or procession should be conducted. The learned Advocate General had reported more than 160 applications have been received for the conduct of procession and also informed that a large number of police force has been

deployed in those vantage areas to maintain law and order. The Court considering the largeness of the issue and in order to avoid any breach of peace was of the definite view that the State Government should requisition the assistance of paramilitary force from the Central Government. In this regard the Court noted the observations made by the Division Bench in WPA (P) 258 of 2022 dated 15th June, 2022. Further, it was pointed out that the assistance of the paramilitary force will definitely help the State police in maintaining the law and order situation apart from assuring the general public that their safety and security will be taken care of. The State was granted liberty to take appropriate action under the provision of the West Bengal Maintenance of Public Order (Amendment) Act, 1972 as amended by West Bengal Maintenance of the Public Order (Amendment) Act, 2017 wherever it is necessary. The Court made it clear that the purpose of the order and directions to ensure the public are assured and reassured that there will be safe in their homes and they will not be affected by any riotous behaviour or arson. The Court also took note of the representation received by the Registry of the Court from the Additional District and Sessions Judge, Diamond Harbour, South 24 Parganas wherein he has lamented about the safety and security of his family residing in Rishra and as to how in spite of the request made by him to the local police, they were reluctant and did not even respond. Therefore, we directed that in areas which are perceived to be sensitive the Judges of the District Judiciary should be in a position to freely discharge their judicial functions and if there is any request made by the District Judiciary for adequate police help or protection to enable them to function or protection for their family the same be

provided by the State without placing any fetters. The State was directed to take all steps with the assistance of the paramilitary force to prevent any untoward incident so that the public would be safe. Further, it was pointed out that in Rishra where rioting took place, stones were pelted from roof tops of the buildings. The Court took note of the submission and observation that had the intelligence wing of the police department be little more vigilant, such pre-planned attacks could have easily been avoided and therefore, directed the intelligence wing of the State Police to take all steps that are required to be taken to avoid any such pre-planned attacks or violence. Thereafter, the matter was heard on 10th April, 2023 and judgment was reserved.

4. During the course of hearing, the learned Advocates for the other two writ petitioners and the petitioner appearing in person were also heard apart from elaborate submissions made by the learned Advocate General, learned Additional Solicitor General, Learned Deputy Solicitor General were heard in full. Before considering to as to what relief the writ petitioners would be entitled to in these writ petitions, we need to examine as to how the law and order situation prevailed in the recent past whenever a religious celebration had taken place in the State. Our task has become easier on account of the various orders passed by the Hon'ble Division Bench on 8 earlier occasions.

5. On 29th March, 2023 an explosion occurred in the house of Hamizuddin Sardar in the area of Phulmalancha Gram Panchayat near Basanti in South 24 Parganas. The said explosion was the result of bombs being pelted in the house and in the explosion one person died. Public interest writ petitions

were filed in WPA (P) 187 of 2022 praying for transfer of the investigation to the National Investigation Agency (NIA). According to the writ petitioners the incident is a part of series of such incidents which had taken place in the recent past involving stone pelting, weaponry, arms, ammunitions, artillery and bombs which has caused great loss of life and public properties. In the affidavit 12 such incidents of bomb blast occurred in the West Bengal were listed which are as follows:

Sl.	Date	Incident
1.	19 th April, 2021	Bomb Explosion outside BJP worker's home in Panihati, North 24 Parganas District.
2.	19 th April, 2021	Bomb blast at Banashpur village in the Mallarpur area of Birbhum at night.
3.	21 st April, 2021	The explosion took place near the house of Trinamool Congress (TMC) regional president Bakul Sheikh in Berugram panchayat area of Ketugram, Purba Bardhaman District. A bomb exploded in front of his house in Chinishpur that day. Raju Sheikh and Raja Sheikh were seriously injured in the blast.
4.	22 nd April, 2021	Man killed, another injured in bomb blast near Titagarh in North 24 Parganas. Several bomb explosions rocked the Megna jute mill area.
5.	29 th July, 2021	Two police personnel were injured in a crude bomb explosion in Jagatdal area of North 24 Parganas district in West Bengal.
6.	7 th September, 2021	Unknown miscreants hurdled three crude bombs outside the house of BJP MP Arjun Singh in the North 24 Parganas district of West Bengal. Notably, when the bombs were hurdled at night on Tuesday, security personnel were present outside the premises.

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REPORTABLE

7.	1 st December, 2021	A blast in South 24 Parganas district's Nodakhali in Diamond Harbour area, where three people died in bomb explosion today.
8.	30 th December, 2021	Two children were injured in an explosion at a garbage vat in Salt Lake's Nayapatti area on Thursday morning, police said. The children were playing near the vat, kept aside a ground, when the low-intensity blast happened around 11.30 am, they said.
9.	19 th December, 2021	Kolkata Municipality Corporation elections: Bomb blast outside polling booth in Sealdah and Taki Boys School, three injured.
10.	3 rd January, 2022	A bomb exploded in the house of accused Kankan Karan, a resident of Paschim Bhangamari village. While accused Kankan Karan was seriously injured in the explosion, another person succumbed to his injuries. A case was filed at the Khejuri Police Station in East Medinipur on 4th January 2022 and the NIA took over the investigation on 25th January 2022,
11.	21 st January, 2022	At least four people have been injured in a parcel bomb blast in a pharmacy in West Bengal's Uttar Dinajpur District. The incident took place at Baharail in Hemtabad.
12.	22 nd February, 2022	An infant was killed, while three other children were seriously injured in a bomb blast out a house in the Kuitha Village of District Birbhum in West Bengal. On Tuesday afternoon, a mysterious sound of a blast was heard behind the house of a man named Monir Sheikh of Kuitha village, which comes under the Sadaipur police station in Birbhum.

6. Further the writ petitioners therein contended that the case registered on the basis of the incident on 29th march, 2022 is a scheduled offence under the National Investigation Agency Act, 2008 (NIA Act) and, therefore, it is required to be investigated by NIA. The report in the form of an affidavit filed by the said appellant was taken note of.
7. In WPA (P) 146 of 2022 the explosion which occurred on 30th March, 2022 was highlighted which was a result of a bomb blast in which a 9 year old girl was injured.
8. In WPA (P) 187 of 2022, a bomb blast which occurred on 24th April, 2022 was highlighted where 5 children mistook a crude bomb which was lying in the field and they started playing with it under the impression that it was a football when all of a sudden the bomb exploded leaving the children severely and critically injured. The State did not dispute that the offences which were committed are scheduled offences under the NIA Act but contended that in every scheduled offence under the NIA Act, it is not required to be investigated by the NIA and in this regard, referred to the preamble of the Act and it was submitted that only in four circumstances the scheduled offence can be referred for the investigation to NIA and those four circumstances are (i) offences affecting the sovereignty, security and integrity of India, (ii) offences affecting the security of State, (iii) offences affecting friendly relations with foreign States and (iv) offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations. It was further submitted on behalf of the State that the

objects and reasons of the Act is also required to be borne in mind. The Division Bench noted that the State has not disputed with the procedure as prescribed under Section 6(1) to (3) of the Act was not followed and the report as required by Section 6(1) was not forwarded. However, it was the submission on behalf of the State that if procedure is not followed, the Central Government should have exercised suo moto power under Section 6(5) of the Act and in support of his contention the learned Advocate General placed reliance on the decision of the High Court of Bombay in the case of **Pragyasingh Chandrapal Singh Thakur Versus State of Maharashtra**¹. The Division Bench after taking note of the several FIRs which are registered by the State Police pointed out that the offences are scheduled offences under the NIA Act and those offences clearly fall within the definition of scheduled offence as defined in Section 2(1) (g) of the NIA Act and taking note of Section 6 of the NIA Act it was pointed out that on receipt of record, the information under Section 154 of Cr.P.C. concerning scheduled offence, it is mandatory for the Officer-in-Charge of the police Station to forward the report to the State Government forthwith. It was observed that the word “shall” used in Sub-section (1) of Section 6 caused such a mandatory duty. Further, it was pointed out that if a report as required by Section 6(1) is not forwarded then no action in terms of Sub-section (2) to (4) can be taken and hence, compliance of Section 6(1) is mandatory for the Officer-in-Charge of the Police Station. Thus, on registration of the case under any of the scheduled enactments under the NIA Act, the Officer-in-Charge of the concerned police station has no option

¹ 2013 SCC Online Bom. 1354

but to send the report to the State Government without any delay as the word “forthwith” finds place in Section 6(1) of the Act. Further, it was pointed out that in terms of Sub-section (2) it is incumbent upon the State Government to forward the report to the Central Government as expeditiously as possible. Therefore, it was held that no delay is permissible on the part of the State in sending the report to the Central Government and in terms of Sub-section (3) the Central Government is to determine within specified period of 15 days from the date of receipt of the report to improve situations firstly whether offence in question is scheduled and secondly considering the gravity of the offence and other relevant factors if the case is fit to be investigated by the NIA. If the Central Government opines that the offence is the scheduled offence and the case is fit to be investigated by the NIA then it was required to direct the NIA to investigate the offence. The Division Bench noted that the above view of the Division Bench is duly supported by the judgment of the Hon’ble Supreme Court in **Naser Bin Abu Bakr Yafai Versus State of Maharashtra** ². Considering the facts of the case on hand, the Division Bench pointed out that though admittedly scheduled offence under the NIA Act has been registered, the Officer-in-Charge of the concerned police station has failed to fulfil the statutory mandate in terms of Section 6(1) of the Act. With regard to the decision of the High Court of Bombay in **Pragyasingh Chandrapal Singh Thakur** the Division Bench held that in the said decision, the constitutional validity of the provisions of the Act was upheld and the argument that Section 6 of the NIA Act confers absolute arbitrary unbridled and unguided powers was

² (2022) 6 SCC 308

rejected by clarifying merely because a scheduled offence is committed, the Central Government will not direct that it will be investigated by the Agency but it will have to apply its mind to the gravity of the offence and other relevant factors. Therefore, it was held that the said judgment will not be of any help to the State.

9. Noting that the investigation in two cases was still pending with the state investigating agency, it was observed that the concerned officer-in-charge of the police station must follow the provisions of Section 6(1) of the Act without any delay. In respect of other cases also, the court noted that though apparently the offences under the provisions of the Explosives Substances Act had been committed, there was no justifiable reason put forth by the state for not registering the offences under the provisions of the Explosives Substances Act. Ultimately the court directed the officer-in-charge of the concerned police station to register offences under the provisions of the Explosives Substances Act and on registration of the offences the provisions contained in Section 6 of the Act was directed to be followed and on receipt of the report, the State Government was directed to take action of forwarding the report in terms of the Section 6(2) within three days and the Central Government thereafter to take an appropriate decision as required and by Section 6(3) of the Act. The judgment to be delivered by the Division Bench dated 30.08.2022 in WPA (P) No. 187 of 2022 etc. has become final.

10. In WPA (P) No. 526 of 2022, a communal conflagration in the city of Kolkata prompted the writ petitioner to file a public interest litigation

alleging that the state police remain silent spectators when the communal violence erupted in Iqbalpur- Mominpur area on the eve of Lakshmi Puja and that no steps were taken to ensure protection of life and property of the members of the scheduled caste community who were severely affected by the riot. Further it was stated that the incident involved throwing of bombs in locality and requisites steps under the NIA Act have not been taken. Under such circumstances, prayer was made that Central Paramilitary Forces have to be deployed forthwith to maintain peace and investigation of the crimes be taken up by NIA. The Division Bench took note of the five FIRs which were registered which included the offences under the Explosives Substances Act and Arms Act and various directions were issued apart from the submissions made on behalf of the state stating that the officer-in-charge, Iqbalpur Police Station had forwarded a report in terms of Sub section (1) of Section 6 of the NIA Act to the State Government and which in turn has already sent intimation to the Central Government in terms of Sub section (2) of Section 6 of the NIA Act. Subsequently, the said writ petition was heard along with WPA (P) No. 528 of 2022 and on 15.11.2022, the NIA was directed to inform about the progress of the case handed over to them.

11. In WPA (P) No. 564 of 2022, a public interest writ petition was filed with regard to an altercation which took place between the two groups of a political party on 15.11.2022 which had disrupted normal life. The learned Advocate General appearing on behalf of the state submitted that the state police has already submitted a report in terms of Section 6 (1) of the Act and the State Government will forward report to the Central Government in

terms of Sub section (2) of Section 6 of the NIA Act. Recording the said submission, the writ petition was disposed of.

12. In WPA (P) No. 4543 of 2022, the Single Bench passed an order on 01.12.2022 directing the charge sheet as well as copies of any evidence collected by Amta Police Station to be forwarded to the National Investigation Agency and the Secretary, Ministry of Home Affairs, Government of India directly within a period of seven days.

13. The case of the writ petitioner Sekh Sarabat Ali was that there was a deliberate attempt made by the local MLA Dr. Nirmal Majhi to sabotage the investigation and destroy the evidence. It was submitted that by the time the belated investigation by Amta Police started, one victim had come to Kolkata for treatment and has stated that he sustained injuries as a consequence of the explosion of gas cylinder when in fact he was a victim of bomb blast and the victim is none other than the son of the writ petitioner. These facts were also directed to be considered by the Central Government and NIA and a suitable decision was directed to be taken.

14. In WPA (P) No. 590 of 2022, a public interest was filed by one Anindya Sudar Das, prayer was made to direct investigation by NIA in respect of two different incidents of explosion of bomb one at Keshpur Police Station, Paschim Medinipur and another at Minakhan Police Station, North 24 Parganas. In the blast, one person had lost his right hand one female child lost her life and that the bombs were stored at a residential house. The learned Advocate General appearing for the state submitted that the report has already been sent in terms of Section 6 (1) of the Act and the State

Government will report to the Central Government in terms of Section 6(2) recording the said submission, the writ petition was disposed of by order dated 29.11.2022.

15. In WPA (P) No. 620 of 2022, the writ petitioner filed a public interest litigation alleged that 1.5 quintals of explosives materials used for making bombs was recovered from Nanoor but no action in terms of provisions of the NIA Act had been taken. The court by order dated 20.12.2022 directed the state to file a report.
16. In WPA (P) No. 607 of 2022 public interest writ petition was filed raising the issue relating to two bomb blasts one of which occurred on 01.12.2022 within the jurisdiction of Panskura Police Station, where one civic volunteer had lost his life and the other within the jurisdiction of Bhupatinagar Police Station where three persons were stated to have been injured and subsequently lost their lives. The learned counsel for the petitioner in WPA (P) No. 607 of 2022 alleged that the second incident was in the residential house of booth president of state ruling party. Further it was stated that the place where incident occurred has not been fenced and no forensic expert has visited the place and no proceedings in terms of the Section 6 of the NIA Act has been initiated. The State sought time to seek instructions which has been recorded in the order dated 12.12.2022. When the writ petition came up for hearing on 28.12.2022, the learned Advocate General informed that so far as the incident falling within the jurisdiction of Panskura Police Station, the state will follow the procedure prescribed under the NIA Act and the report in terms of Section 6(1) will be forwarded by the

officer-in-charge of the concerned police station of the State Government and thereafter the State Government will forward the report to the Central Government in terms of Section 6(2) of the NIA Act. Subsequently, when the writ petition was heard on 21.03.2023, the Learned Advocate General has reported that from the report submitted by CFSL shows that the explosives substances were used and therefore a report in terms of Section 6(1) of the Act will be submitted.

17. The above decisions have been referred to the highlight that the use of explosives substances, hurling of bombs during processions, rallies and religious ceremonies have been occurring and recurring regularly and in all such cases investigation has been transferred to NIA. In one of the cases where state police failed to register a case under the Explosives Substances Act, the court took note of the facts and pointed out that when an offence of a similar nature which was brought to light in WPA (P) No. 146 of 2022, the officer-in-charge of the concerned police station had registered offences under the provisions of the Explosives Substances Act, there was no justifiable reason put forth by the state for not registering the offence under the provisions of the Explosives Substances Act in the case involved in WPA (P) No. 187 of 2022 and therefore direction was issued to register offence under the provisions of the Explosives Substances Act.

18. In the report submitted on behalf of the Commissioner of Police, Chandannagar Police Commissionerate, mention has been made about the FIR registered with Serampore Police Station in Case No. 141 of 2023 dated

02.04.2023 where offences under the Arms Act have been registered. In the said report, it has been mentioned as follows:

Police requested them to stop their illegal activities and maintain peace and tranquility in the area. But they became more furious and started to assault police by using bamboo sticks and throwing bricks, stones and also started to damage one Government Vehicle bearing registration no.- WB23/H-779. Thereafter they set Government Vehicle bearing registration no. WB-23/A-0184 on fire and put on arson one local shop. As per order of superiors, force fired tear smoke=grenade, stun-grenade, spade, paper cartridge, long and short range shell, rubber bullet etc. to disperse the mob but they became more furious and again started to assault police personnel with bamboo sticks, iron rod, stones/bricks, and displaying sword and fire arms with a view to kill the police personnel. Then the police team used mild force upon the unlawful mob to disperse them. During the time of dispersal, they stole some body protector equipment of police personnel. As a result so many police personnel received bleeding injury on their person. The police team somehow handled the situation by detaining the above noted accused persons from the spot to prevent the commission of further offences and damage to public and private property and to protect life of public and police. It is to be mentioned here that there was a news on various news portals that miscreants stopped the train services. In this regard, it is bring noticed that violence erupted again on 3rd of April, 2023 evening at many places including 4 No. railway gate. One vehicle of Eastern Frontier Rifle (EFR), Salua was stopped by the miscreants near the railway crossing and put on fire. The burning vehicle touched the automated drop gate which got stuck and led distress signal. Railway authorities reached the spot and converted the barrier into manual handling. So train services were suspended temporarily to mend the automated barrier. Shortly the vehicle was removed away. Train services resumed shortly. As informed by railway authorities there was absolutely no damage at railway station or of railway property.

Again on 03.04.2023 evening Sub Inspector Altaf Hossain of Rishra Police Station along with other officers and force under supervision of superior of Chandannagar Police Commissionerate were performing Area Domination Duty for boosting up the confidence of general public over the issue of Ram Nabami incident/clash vide Rishra PS GDE No. 89 dated 03.04.2023. While the police team reached at N.S. Road area, suddenly at 12:10 hrs. approx 300/400 local people of the area gathered and used filthy language desperately aiming upon the police personnel. Then they started pelting bricks/stones towards police personnel. As a result the situation deteriorated. Finding no other alternative, to stop their movement, Sub Inspector Altaf Hossain Hazari informed the matter to Officer-in-Charge, Rishra Police Station and requested for re-enforcement of force to tackle the situation. Accordingly Officer-in-Charge, Rishra Police Station along with superiors of the Chandannagar Police Commissionerate and re-enforcement team reached there and declared the mob as unlawful assembly and commanded them to disperse from that place by hand held loud hailer. Police again requested them to stop their illegal activities and maintain peace and tranquility in the area. But they became more furious and started to assault police by using bamboo sticks and throwing bricks, stones. Thereafter they put on arson one local shop. As per order of superiors, force fired tear smoke-grenade, stun-grenade, spade, paper cartridge, long and short range shell, rubber bullet etc. to disperse the mob but they became more furious and again displaying sword and fire arms with a view to kill the police personnel. Then the police team used mild force upon the unlawful mob to disperse them. During the time of dispersal, they stole some body protector equipment of police personnel. As a result, so many police personnel received bleeding injury on their person. The police team tactfully handled the situation by detaining the above noted accused persons from the spot to prevent the commission of further offences and damage to public and private property and to protect life of public and police.

19. Along with the said report of the Commissioner of Police, Chandannagar Police Commissionerate, dated 04.04.2023 several annexures have been filed and one of the annexures is a complaint given to the Rishra Police Station by one Mr. Nirmal Ghosh which finds place in page 18 of the said report wherein it has been stated as follows:

Ali MD. Shakir 28 Gandhi sarak post:- Rishra ps: serampore District:- Hooghly they themselves and accompanied with huge trinamul miscreants deliberately and pre-planned, without any provocation, attacked us and were ruthlessly throwing stones and several bombs were thrown by them upon the rally an our supporters, by throwing stone our M.L.A. of Pursura Bidhan Sava Mr. Biman Ghosh got blooded injury on the lower part of his Head and on the ear now he is admitted in the Hospital and Mr. Dilip Ghosh has also attacked and injured by Bombs and his Car has been destroyed by the miscreants, not only that our about 2000 supporters present in the rally have also been ruthlessly bitten by present miscreants, near Baro Masjid and Trinomul supporters and attacked by bombs for that they got heavily blooded injury some treating by the nearest Hospital (necessary injury report, documents and video footages will submit latter on at the time of investigation)

20. Though the complaint of Biman Ghosh dated 03.04.2023 was taken on record (Page 18 of the Report of Commissioner of Police, Chandannagar), specifically, alleging that persons were attacked by hurling bombs, no investigation appears to have been done in that regard, and no steps taken to alter the FIR dated 02.04.2023 in Case No. 161/23 was reported. This, in our opinion is serious lapse.

21. In Paragraph 10 of the writ petition No. WPA (P) No. 151/23, there is a specific allegations that since, bombs were hurled, the provisions of the

Explosive Substance Act, 1908, will be attracted and hence, investigation has to be conducted by NIA. Though the learned Advocate General points out that in the Report submitted by Superintendent of Police, Islampur, this allegation is denied, the annexures to the report which we have taken note of above, belies the situation.

22. News report dated 2nd April, 2023 (Annexure P2 in WPA (P) 156/23) quotes a statement of a Senior Officer that video footage has established the identity of the armed vandals. The identity of the people who have been thrown petrol and acid has been given and Bengal CID is raiding different areas to trace them out.

23. In the interim report drawn by the relief hospital while recording a short history of the case and the injuries stated by the patient party, it has been stated that was passing besides a road at Rishra then gas bottles, stones, crude bombs were thrown from adjoining areas and the patient had sustained severe injuries. These documents which are appended to the reports submitted by Commissioner of Police Chandannagar, Police Commissionerate will clearly reveal that scheduled offences have been committed despite the same, the state police have not registered offences under the Explosives Substances Act. The seizure list has been annexed along with the report along with the report from pages 12 to 16 along with the report. We find that under the column list of articles in the seizure list drawn one column has been left blank and all the four seizure reports have been prepared by the very same officer as the handwriting is identical. It is hard to believe that the very same person was able to draw five seizure

reports within a short span to time though it is stated by the learned Advocate General had areas where the seizure took place were in close proximity. In any event, we find the seizure report not reflecting the true state of affairs especially considering the nature of offences which have been registered in the various FIRs could not have been as a result of minimum number of weapons and glass bottles which have been seized. Therefore, there is a series of doubt on the very seizure report when there was a specific complaint made on 03.04.2023 that bombs were hurled and people were injured with heavy bleeding injuries. It is not clear as to why the police have not registered any offence under the provisions of the Explosives Substances Act. Thus, the question would be as to whether the state police have purposely failed to register any offence under any of the scheduled enactments fearing that the matter will have to be transferred to the central agency for investigation and further action. This would be a good reason for the court to transfer the investigation to a central agency. The reports have carried photographs of people with bleeding injuries. It is true that the court cannot come to a conclusion based on press reports, nevertheless the investigation has to proceed to ascertain the exact cause of such large-scale rioting. Further we note that in FIR No. 141 of 2023 dated 02.04.2023 offences have been registered under various provisions of the IPC, Arms Act, Public Property Destruction Act etc. but no offence has been registered under the Explosives Substances Act and the FIR relates to incidence which occurred in five different areas and identical offences have been registered which also cast a serious doubt on the manner in which the state police have investigated the matter. The IC Serampore Police in his report dated

04.04.2023 to the Inspector-in-Charge Serampore Police Station stated that the mob became furious and assaulted the police with bamboo sticks and throwing bricks on the police and also damaged one government vehicle and thereafter set fire to another vehicle and one local shop and based on orders of superiors tear gas, smoke grenade, stun grenade, spade, paper cartridges long and short range shell, rubber bullet etc. were used to disperse the mob but they became more furious and again started to assault police personnel with bamboo sticks, iron rods, stones, bricks, swords, displaying fire arms with a view to kill police personnel and therefore police team used mild force upon the unlawful mob to disperse them and during the time of dispersal the mob stole some body protecting equipment of police personnel as a result of which several policemen received bleeding injuries on their person and head. In the other seizure lists which have been drawn on 03.04.2023 records seizure of swords. Thus, from the above facts it is evidently clear that despite the offences being committed under the Act mentioned in the schedule to the NIA Act, no case has been registered under the provisions of such Act. It raises a series doubt in our minds as to whether this was a deliberate attempt by the investigating police fighting shy of resorting to the procedure required to be complied with under Section 6(1) of the NIA Act.

24. In the preceding paragraphs, we have referred to the various orders passed by this court by the Division Bench of this Court from August 2022 and in all such cases, the offences under the Explosives Substances Act have been committed and in one such case they did not register an offence

under the said Act and the Division Bench rejected the stand taken by the state as being unbelievable and direction was issued to register a case under the Explosives Substances Act. Probably the state police having been directed by this Court in more than 8 orders to transfer the matter to the NIA, in the present incidents they have under played the true state of affairs which in our view should not be permitted. Considering the fact that there was a genuine apprehension in the mind of the public as brought on record by the writ petitioner in WPA No. 151 of 2023 apprehending serious violence during Hanuman Jayanti, the court had to direct central agency to be deployed which our direction was complied with and it appears that the Hanuman Jayanti festival passed off without any serious incidents. In the various orders passed by the Division Bench as referred to above where the direction have been issued to sent a report in terms of the Section 6 (1) of the NIA Act, however in the cases on hand, we prima facie find that there has been a deliberate attempt on the part of the concerned police not to register any offence under the provisions of the Explosives Substances Act. There is also mention about the acid bottles and if be so, necessarily offence under the scheduled Act having been committed, the procedure under Section 6(1) of the NIA Act should have been resorted to. Therefore, we are convinced that no useful purpose would be served by directing the state police to register cases under the Explosives Substances Act or under any other scheduled act as the matter has travelled beyond the said stage and it is a fit case where the entire investigation should be transferred to the National Investigation Agency with a direction to the Central Government to exercise their power under Section 6(5) of the NIA Act.

25. The Hon'ble Supreme Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.

(Vide *K.V. Rajendran v. CB-CID* [*K.V. Rajendran v. CB-CID* (2013) 12 SCC 480, *Gudalure M.J. Cherian v. Union of India* [(1992) 1 SCC 397] , *R.S. Sodhi v. State of U.P.* [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248 : AIR 1994 SC 38] , *Punjab and Haryana High Court Bar Assn. v. State of Punjab* [(1994) 1 SCC 616 : 1994 SCC (Cri) 455 : AIR 1994 SC 1023] , *Vineet Narain v. Union of India* [(1996) 2 SCC 199 : 1996 SCC (Cri) 264] , *Union of India v. Sushil Kumar Modi* [(1996) 6 SCC 500 : AIR 1997 SC 314] , *Disha v. State of Gujarat* [(2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628 : AIR 2011 SC 3168] , *Rajender Singh Pathania v. State (NCT of Delhi)* [(2011) 13 SCC 329 : (2012) 1 SCC (Cri) 873] and *State of Punjab v. Davinder Pal Singh Bhullar* [(2011) 14 SCC 770 : (2012) 4 SCC (Civ) 1034 : AIR 2012 SC 364] .)

26. In the result, the writ petitions are disposed of by directing the concerned police to ensure that all the FIRs, documents, materials seized, CCTV footage etc. be immediately handed over to the appropriate authority

of the National Investigation Agency who on receipt of all the entire materials shall commence investigation and proceed in accordance with law. The respondent police are directed to comply with the direction of handing over all the material to NIA within a period of two weeks from the date of receipt of the server copy of this order. No costs.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- PRAMITA/SACHIN)