

01.05.2023.
Court No.13
Item No. 12
ap

W.P.A. No. 9989 of 2023

**Chanchal Nandi
Versus
The State of West Bengal & Ors.**

Mr. Rajdeep Majumder,
Mr. Sourav Chatterjee,
Mr. Moyukh Mukherjee,
Ms. Aishwarya Bazaz.

...For the petitioner.

Mr. Samrat Se. Ld. AAAG,
Mr. Amal Kumar Sen,
Mr. Suddhadev Adak.

...For the State.

Mr. Sukanta Chakraborty,
Mr. Ayanabha Raha.

...For the CBI.

1. Affidavit-of-service filed in Court today be taken on record.
2. The petitioner is aggrieved by a notice under Section 160 of the Code of Criminal Procedure dated 19th April, 2023 issued to him in connection with Nandakumar Police Station FIR No. 91 of 2023 dated 24th April, 2023.
3. A large number of decisions have been relied upon by Mr. Majumder, Counsel for the petitioner, challenging a practice adopted by the police in the Purba Medinipur District. The practice is that when a witness responds to a notice under Section 160 of the Code of Criminal Procedure, he is immediately arrested after naming him as accused with a view to frustrate his right to seek anticipatory bail. Reliance is also placed on a decision of the Hon'ble Supreme

Court of India in the case of ***State represented by Inspector of Police & Ors. – Vs. – N.M.T. Joy Immaculate*** reported in ***(2004) 5 Supreme Court Cases 729***; a decision of a Co-ordinate Bench of this Court dated 9th January, 2023 passed in C.R.R. No. 3047 of 2022; a decision of a Co-ordinate Bench of this Court dated 4th August, 2022 passed in C.R.R. No. 2790 of 2022 and the observations of a decision of a Division Bench of this Court dated 11th October, 2022 passed in M.A.T. No. 1690 of 2022.

4. The sum and substance of the views taken by the Benches referred to hereinabove is that the scope of Section 160 of the Code of Criminal Procedure is restricted to summoning the witnesses to assist in an investigation into the FIR. The power under Section 160 of the Code of Criminal Procedure cannot be abused or used for detaining somebody in custody either by naming him as accused or detaining him as a suspect.

5. Be that as it may, Mr. Samrat Sen, learned Senior Advocate has submitted that the petitioner has already expressed his intention to participate in the investigation.

6. In view of the above, this Court directs that the petitioner may appear before the Investigating Officer of the case in connection with the subject FIR and participate in the investigation on any two days in a week for a period of two hours. Sufficient notice of 72

hours shall be given to the petitioner by the Investigating Officer of the case and no coercive steps shall be taken against the petitioner without the leave of this Court.

7. It is, however, made clear that in the event the Investigating Officer proposes to either name the petitioner as an accused in the FIR No. 91 of 2023 dated 24th April, 2023, or detain him in custody, the petitioner shall not be arrested for a period of fifteen days after such formal naming and intimation to the petitioner.

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

9. There will be no order as to costs.

10. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)