

WPA 15797 of 2023

Md. Asmaul Sk. @ Asmaul Sekh

-vs-

State of West Bengal & ors.

Mr. Mrityunjoy Chatterjee

...for the petitioner

Mr. Amitesh Banerjee, Ld. Sr. Standing Counsel

Mr. Tarak Karan

...for the State

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent no.5 to ensure adequate police protection to the petitioner and/or stay the proceeding in Kaliachak Police Station Case No. 722 of 2023 dated 17.06.2023 under Sections 109, 120B, 302 read with Section 34 of the Indian Penal Code.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner has been falsely implicated in the present case. Soon before the incident, he had along with others changed sides from the ruling party to another political party. The allegations made in the FIR contradicted the post-mortem report. It is stated in the FIR that the accused seriously assaulted the victim as a result of which he fell down and died. Even an iron rod was used. But, there is no mark of injury found in the post-mortem report. The other accused in this case have been granted the

relief of 'not to take coercive measures' for a limited period in view of the ensuing Panchayet Election. Reliance is placed on an order dated 03.07.2023 passed by this Court in WPA 15613 of 2023.

Learned senior standing counsel representing the State relies on the earlier report and case diary and submits as follows. The relief like an order directing not taking up coercive steps is an absolute exception and could be granted and rarest of rare cases. The present petitioner is not standing on the same footing as those who were granted such relief in connection with the present case.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition, the report and the case diary.

It is true that the post-mortem report indicates no external injury on the dead body. However, the prime thrust of the prosecution case is that the victim was simply assaulted by the petitioner and others, although there is a mention of use of iron rod at a place in the FIR. The bulk of the statement of eyewitnesses referred to assault by the petitioner without such weapons. These may not be leave a mark which could be found either in the inquest report or in the post-mortem report.

Moreover, the petitioner is not standing on the same footing as the others who were granted such relief. Most of the statements directly take the name of the present petitioner and two others in participating in such assault.

In view of the above, I am not inclined to grant similar relief to the petitioner as was granted to some other accused, differently placed.

Accordingly, the writ petition is dismissed.

But, the petitioner shall be at liberty to seek appropriate relief available to him as per law.

The Inspector-in-Charge of Kaliachak Police Station shall keep a strict vigil and ensure that no untoward incident take place at the locale.

Urgent Photostat certified copy of this order may be delivered to the learned advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)