

WPA (H) 41 of 2023

Mortoja Ali Middya

v.

The State of West Bengal & Ors.

24.08.2023

SL-03

Ct.11

(S.R.)

Mr. Soumosree Chatterjee

Mr. Dipayan Kundu

Mr. Prasun Mukherjee

... for the petitioner.

Mr. Debabrata Chatterjee, APP

Mrs. Amrita Panja Moulick

... for the State.

In invocation of the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has come up with a prayer for issue of a Writ of *habeas corpus* to rescue and recover the petitioner's father, namely, Asraf Ali Middya (in short, Asraf).

The facts as unfurled in the writ petition are that on 14th April, 2021 Asraf fell seriously ill at his residence and he was taken to Amta Rural Hospital and got admitted therein. Asraf had tested positive for Covid-19 and he was referred to Baltikuri ESI Hospital, Howrah.

On 17th April, 2021 at about 12.30 a.m. one official of the ESI Hospital informed the petitioner over the phone that Asraf had passed away. On receipt of such information, the petitioner went to the office of the Pradhan, Islampur Gram Panchayat, Islampur, Howrah and requested him to communicate such information to the Block Development Officer concerned and, on being so

requested, the Pradhan concerned wrote a letter to the Block Development Officer making a recommendation to hand over the dead body of Asraf to the petitioner and the Pradhan assured that if the dead body of Asraf is cremated following the Covid protocols, the concerned authority of the Gram Panchayat would have no objection. Thereafter, the petitioner and his family members went to Baltikuri ESI Hospital to receive the dead body of Asraf but allegedly the Hospital authority was going to hand over a dead body of a female person and the petitioner was asked to sign in the counterpart of the death certificate issued in the name of his father. The petitioner refused to accept the death certificate issued in the name of his father but took a photograph of the said death certificate, which has been annexed to the writ petition as Annexure P-3. Since, the Hospital authority could not submit any satisfactory explanation regarding the whereabouts of Asraf, the petitioner was forced to make a complaint before the Officer-in-charge of Domjur Police Station on 20th April, 2022. On the basis of that complaint, one Domjur Police Station Case No.286 of 2021 dated 20th April, 2021 under Sections 406/202/203 was started. Thereafter, the petitioner has preferred this writ petition, *inter alia.*, claiming therein that Asraf went missing on 17th April, 2022 and in spite of being approached on numerous occasions, the concerned

police authorities did not take any effective step to recover the Asraf.

Mr. Chatterjee learned advocate appearing for the petitioner submits that the Hospital authority could not hand over the dead body of Asraf and even they could not give any satisfactory explanation regarding whereabouts of Asraf. He vociferously contends that Asraf is still alive and the police authorities have failed to take effective steps to recover Asraf. He submits that the investigation of this case should be transferred to another investigating agency to recover Asraf.

Mrs. Panja Moulick, learned advocate appearing for the State respondents submits that Asraf died of Covid and the petitioner was shown the dead body of Asraf and he refused to attend the cremation of Asraf which would be explicit from an instrument bearing the petitioner's signature and that instrument has been collected by the I.O. from ESI Hospital. She submits that the investigation of Domjur Police Station Case No.286 of 2021 dated 20th April, 2021 has been completed and the investigating authority has submitted final report, being Domjur Police Station FRMA No.774 of 2022 dated 20th September, 2023. The report, as placed by Mrs. Panja Moulick, is taken on record.

Heard the learned advocates. Perused the materials on record placed before us.

The writ petition and its accompanying documents and the report, as placed by Ms. Panja Moulick, indicate that Asraf passed away in Baltikuri ESI Hospital due to Covid. From the letter of the Pradhan of Islampur Gram Panchayat, Islampur, Howrah (Annexure-P-2 to the writ petition) it transpires that from the ESI Hospital, the petitioner was informed that Asraf had died of Covid and the Pradhan made a recommendation of BDO to hand over the dead body of Asraf to the petitioner and the Pradhan concerned informed the Block Development Officer concerned that if the dead body of Asraf was cremated following the Covid protocols the said Gram Panchayat would not have any objection and on the said letter of the Pradhan, the petitioner put his signature. Suffice it to note that one death certificate was also issued from Baltikuri ESI Hospital in the name of Asraf declaring that Asraf has died on 17th April, 2021 at about 10.40 a.m. and the final report also lends support to such fact. So, from the materials placed before us, we could not find any material to infer that Asraf was illegally detained and/or wrongfully restrained and/or confined by any person or authority.

In such sequence of facts, we are of the considered view that no interference is called for in the writ petition. Consequently, the writ petition stands disposed of.

However, it is clarified that this order shall not

preclude the petitioner from taking appropriate steps in accordance with law before the appropriate forum.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

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