

04 29.08.2023
NB Ct. 14

WPA 20529 of 2023

X (The Victim)
Vs.
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya Sr. Adv,
Mr. Samim Ahammed,
Ms. Anjana Mehboob,
Ms. Lulsanwara Pervin,
Mr. Arka Rajnaji Bhattacharya, m
Mr. Anirudha Singh,
Ms. Saloni Bhattacharya.
...for the petitioner.

Mr. Amal Kr. Sen Id. AGP,
Ms. Sahina Sumi.
....for the State.

On 29.08.2023, directions were passed to hide the identity of the petitioner. It appears that steps were taken in this regard. However, so far as the order dated 23.08.2023 is concerned, certain corrections need be done.

Let the petitioner's name be struck out and be replaced with the expression "X (The Victim)".

These corrections be effected by the Department by tomorrow.

The corrections made in the order dated 23.08.2023 shall be effected in the copy uploaded in the official website of the Court at the earliest.

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to grant protection to the petitioner to secure her safety and security, to properly investigate the offences alleged by her and also to preserve and produce the relevant evidence,

including the CCTV footage of the Burdwan Sadar Police Station.

Reports filed by the Investigating Officer of the Burdwan Sadar Police Station and Investigating Officer of the Burdwan Women Police Station are also taken on record.

Learned senior counsel representing the petitioner submits as follows. In the night of 30.06.2023, the petitioner was brutally raped by the accused miscreants. The miscreants belonged to the ruling political dispensation. No action was taken by the police in this regard, far less an FIR being registered. This compelled the petitioner to approach the Magistrate for a direction under Section 156(3) of the Code. After such direction was passed, Burdwan Sadar Women Police Station Case No.305 dated 12.07.2023 was registered under Sections 448, 376 and 511 of the Penal Code. It is germane to mention that earlier the same miscreants had abused, molested and assaulted the petitioner on 16.06.2023. Accordingly, Burdwan Sadar Police Station Case No.1055 dated 19.08.2023 had been registered under Sections 418, 325, 326, 354B, 427, 379 and 506 read with Section 34 of the Penal Code. There was immense pressure put on the petitioner to withdraw the cases. As the petitioner did not yield to such pressure, on 15.08.2023, she was stripped naked in front of her child and was brutally assaulted. No action was taken by the police in this regard. The petitioner was forced to flee her own home and take shelter at a charitable institution in Kolkata. Unless a direction is given and the investigation is transferred, the petitioner would not be able to cooperate with the investigation

or even stay at her own home in the village. The police authorities allowed the accused to obtain bail in the case under Section 376 of the Penal Code.

Learned counsel appearing on behalf of the State relies on the reports and case diaries and submits as follows. There was a stark contradiction between the application under Section 156(3) of the Code where the petitioner stated about an attempt to rape and the statement of the victim recorded under Section 164 of the Code where she claimed that she was raped. This might have prompted the learned Court to grant the accused bail. The police authorities had opposed the application and did not facilitate the accused getting bail. Investigation is being conducted properly. All submissions have been recorded and materials seized. Necessary statements were recorded under Section 164 of the Code. Medical examination of the victim was also done. It is pertinent to state that there is a long-standing land dispute between the victim and the prime accused who is a neighbour of the victim. However, soon after the incident of 15.08.2023, an FIR was registered and same is being investigated into. Charge sheet has been filed in respect of the case started on the incident of 16.07.2023.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the writ petition and the reports filed by the State and the case diaries.

Even, if a dispute was there between the adverse parties and that was the starting point of the animosity between them, there is no excuse for the miscreants to have acted in the fashion they have either on 01.07.2023 or on 15.08.2023. The

desperation and depravity involved in these alleged incidents are deplorable and the action taken by the police are found grossly insufficient. There is no reason for the police to have waited till 19.08.2023 to register an FIR. If the victim was not in a position to go for filing a formal complaint, a suo motu FIR could have been registered. Admittedly, the victim was there in the hospital.

Both the personnel from the Burdwan Police Station and the Burdwan Women Police Station have not been able to justify their actions in dealing with these incidents.

It is also surprising that the accused could not be arrested over the incident of 15.08.2023. The police are still looking for the influential accused who arguably have political influence.

In view of the above and in the interest of justice, this Court is inclined to pass the following directions -

- (i) Let the Burdwan Women Police Station Case No.305 dated 12.07.2023 be investigated by a superior Officer of the rank of Deputy Superintendent of Police to be appointed for such purpose by the Superintendent of Police, Purba Burdwan District Police.
- (ii) Let the Burdwan Police Station Case No.1055 dated 19.08.2023 be investigated by a superior Officer of the rank of Deputy Superintendent of Police to be appointed for such purpose by the Superintendent of Police, Purba Burdwan District Police.

- (iii) Both the investigations shall be conducted under the direct supervision of the Superintendent of Police, Burdwan Police District.
- (iv) The petitioner shall intimate the date and time when she wants to return to her home in the village to the Superintendent of Police, Purba Burdwan with a 24 hours' notice. The concerned Superintendent of Police shall, thereafter, direct the local police authorities to take necessary steps and provide adequate police protection so that she can return to her own home in the village.
- (v) After the petitioner returns home, the police shall post a picket of two personnel with one armed guard in front of the house for protection of the petitioner and her family members. Such protection shall continue till the submission of the report in final form in both the cases.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)