

15.06.2023
Court No.01
Item No. 31
Rejected

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

sg

CRM (A) 285 of 2023

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Kotwali Police Station Case No. 314 of 2013 dated 16.05.2013 under Section 21(C) of the NDPS Act.

And

In Re: **Pawan Kumar Agarwal &Anr.**

Petitioners

Mr. Sabir Ahmed

Mr. Hillol Saha Podder

For the Petitioners

Mr. Sudipta Majumder, ld. DSG

For the CBI

Mr. Aditi Shankar Chakraborty, Ld. APP

Mr. Kallol Nag

For the State

1. The reports filed by the Superintendent and the learned District Judge are taken on record.
2. The Superintendent of Police, Cooch Behar is personally present before us.
3. We have heard the learned Counsel for the petitioners and the learned Public Prosecutor. It appears from record that the charge-sheet was submitted by the Investigating Officer on 11th March, 2015 against the three accused persons, namely, Susanta Ghosh, Ramesh Agarwal and Pawan Agarwal under Section 21(c) of the NDPS Act, 1985. Cognizance was taken by the then learned Special Judge, NDPS Court on 11th March, 2015. Since no ER of WA was received from the concerned Police Station, WPA was issued against Ramesh and Pawan on 02-07-2015. Process in respect of WPA was accordingly issued

pas per the direction of the then Court on 3rd July, 2015. Thereafter, the WPA had not been executed till 25th January, 2018.

4. On 13th March, 2018, a fresh WPA was issued against both the accused persons and the next date was fixed for ER of WA. Since no ER was received vide Order No. 50 dated 19th July, 2018, the then learned Court directed the I.C., Kotwali Police Station to take steps for executing the WA against the accused persons positively by the next date and to submit a report in this respect and a copy of the order-sheet was sent to Kotwali Police Station for his information and necessary compliance. A copy of the said order was also sent to the Superintendent of Police, Cooch Behar for his information and for passing necessary direction upon the I.C., Kotwali Police Station for compliance of the order of the learned Court. It appears that, even after that, no ER was submitted by reason whereof, the learned Trial Court vide an Order No. 52 dated 12th December, 2018 directed the S.I., Bhabatosh Sarkar, to execute the WA positively by the next date and to personally appear before the court to explain the steps taken by him for execution of WA against those accused persons. A copy of the order was also sent to the I.C., Kotwali Police Station and Superintendent of Police, Cooch Behar for information and necessary action. However, even on the next date, i.e. 28th February, 2019 and subsequently on 14th June, 2019, no ER was received from the concerned authority.
5. It appears from the Order No. 60 dated 14th June, 2019 that S.I. Bhabatosh Sarkar was unable to execute the WA due to engagement in law and order duty and, accordingly, the then learned Court directed the I.C., Kotwali PS to take immediate steps for executing the WA against the absconder accused

persons positively by the next date after taking necessary permission from the SP, Cooch Behar. A copy of the said order was sent to I.C., Kolwali Poilce Statin as well as Superintendent of Police, Cooch Behar.

6. Since thereafter, between 2nd September, 2019 and 12th June, 2023, in spite of repeated extension orders for early execution of WA and in spite of forwarding the WA to the DIG, Darjeeling for getting the WA execution against the absconder accused persons, no fruitful step has been taken by the investigating authority. It appears that on every stage, Superintendent of Police, Cooch Behar was communicated with the orders passed by the learned Trial Court.
7. In between, the absconder move an application for quashing of the complaint in Criminal Revision Nos. 2384 of 2015 and 2385 of 2015 which were dismissed on 11th March, 2016 by Hon'ble Justice Joymalya Bagchi observing by an order dated 11th March, 2016 that a prima facie case has been made out. This order has been conveniently suppressed by the petitioners in this proceeding. The Investigating Authorities were aware of the said order but it appears that they did not take any interest to arrest the absconders even after their application for quashing was rejected by Justice Bagchi on 11th March, 2016. In the meantime, on 9th June, 2013, we directed the Superintendent of Police, Cooch Behar to look into the matter as the I.O. was unable to produce the original case diary and filed a report as to the steps taken by the Superintendent of Police, Cooch Behar against the Police Officers responsible for the loss of the original case diary and failure to execute the warrant of arrest.

8. We had called for a report from the learned NDPS Court with regard to the progress of the trial and nor any attempt was made for proclamation and attachment. We have already briefly indicated from the report the progress of the trial. The learned Special Judge, NDPS Court in her report has stated that on 22nd June, 2023 i.e. after the order was passed by this Court, a prayer was rejected for issuing WPA from the learned PP and the date was fixed on 15th June, 2023 for passing necessary order.
9. A charge-sheet was submitted on 11th March, 2025 but the trial of the case has been delayed due to abscondance of the accused persons namely, Pawan Agarwal and Ramesh Agarwal. In the report filed by the Superintendent of Police, it is stated that show-cause has been issued against the Investigating Officer Sub Inspector Uttam Sharma and Constable Dipankar Das through Special Task Force, West Bengal on 12th June, 2023. It has been stated that a raid was conducted on 11th June, 2023 but the accused persons could not be arrested.
10. FIR states that the SI Prashanta Biswas of Kotwali Police Station, Cooch Behar intercepted a truck bearing No. WB25D-5448 from the Ward No. 8 of Cooch Behar Town seized 4550 bottles of phensidyl cough syrup each containing 100 ml. Sushanta Ghosh is the truck driver. Pawan and Ramesh are the transportee. The Investigating Authorities including the responsible officers of the Police, in spite of communication of orders passed by the learned Trial Court with regard to the execution of the warrant, had failed to execute the said warrant and surprisingly did not apply for proclamation and attachment till this Bench had taken serious note with regard to negligence conducted by the Investigating Authorities. Giving a clear indication that the

Investigating Authorities are, in fact, harbouring the accused persons and are not interested to execute the warrant. In order to avoid the adverse remark with regard to conduct of the trial on 14th June, 2023, a SIT was being formed by the Superintendent of Police, Cooch Behar to be headed by Additional Superintendent of Police (Headquarter), Cooch Behar to search the whereabouts of the original case docket in connection with the reference case which is found missing. The report filed by the Superintendent of Police, Cooch Behar shows an extremely unsatisfactory progress of the case and surprisingly, in spite of rejection of the order for quashing the FIR by Justice Bagchi on 11th March, 2016 the accused persons could not be nabbed. The petitioners showing scant regard to the order passed against them and in suppress thereof, had filed this application for anticipatory bail on 1st May, 2023. In the petition, the petitioners have disclosed the prescriptions from Doctor dated 15th October, 2022 to 22nd November, 2022 having his chamber in Pradhan Nagar, Siliguri. In fact, the discharge summary of Aaahna Medical shows that they were in the said Nursing Home on 22nd November, 2022. It clearly shows that they were roaming around in Darjeeling, Cooch Behar and Siliguri freely without being arrested by the Investigating Officer. It clearly shocks the conscience of the Court and raised a doubt with regard to impartiality of the Investigating Authorities.

11. Under such circumstances, we are of the view that the Investigating Authorities have completely abdicated their power and there was no positive intention on the part of the Investigating Authority to arrest the accused persons.

12. In view of the above, we propose reconstitution of the SIT by directing the appointment of Deputy Inspector General of Police, CBI (Special Crime Branch) under whose supervision the investigation shall be carried by the SIT.
13. The SIT shall investigate into the matter and take immediate steps for registration of cases against the Police Officers responsible for the missing case diary and for not executing the warrant of arrest and also shall make all endeavour to arrest the accused persons at the earliest. This order shall be immediately communicated to the Director, CBI.
14. The application for anticipatory bail is dismissed with costs assessed at Rs.1,00,000/- (Rupees One Lakh only) to be paid by each of the accused persons to the State Legal Services Authority.
15. In the event of surrender before the learned Trial Court, the bail condition must include the compliance of the aforesaid directions.
16. Mr. Sudipta Majumder, learned Deputy Solicitor General, representing the CBI appears on our request to facilitate the implementation of the order passed in this matter.
17. We request Mr. Majumder to communicate this order to the Deputy Inspector General of Police, CBI (Special Crime Branch).
18. The application for anticipatory bail of the petitioners is, thus, rejected. CRM (A) 285 of 2023 is, thus, disposed of.
19. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J)

(Soumen Sen, J)