

**HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGUIR
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

CRM (DB) 92 of 2024

**NABA KUMAR BARMAN @ NABA KR BARMAN
VS
THE CENTRAL BUREAU OF INVESTIGATION AND ORS.
With**

CRM (DB) 483 of 2024

**TAHIDUL MIA @ MIYA
VS
THE CENTRAL BUREAU OF INVESTIGATION
With**

CRR 2987 of 2022

**CENTRAL BUREAU OF INVESTIGATION
Vs
STATE OF WEST BENGAL & ORS.**

For the Petitioner : Mr. Subhasish Misra
In CRM (DB) 92 of 2024 Mr. Satyajit Paul, Advocates
(Opposite party no. 13 in CRR 2987/2022)

For the Petitioner : Mr. Partha Pratim Sarkar, Advocate
In CRM(DB) 483 of 2024
(Opposite party no. 3 in CRR 2987/2022)

For the CBI in : Mr. Sudipto Kumar Mazumder, DSGI
CRM (DB) 92 of 2024 Mr. Ajoy Kumar Singhanian,
Mr. Sourab Kar, Advocates

For the CBI in : Mr. Sudipto Kumar Mazumder, DSGI
CRM (DB) 483 of 2024 Mr. Ajoy Kumar Singhanian,
Mr. Saptak Sarkar, Advocates

For the CBI in
CRR 2987 of 2022

: Mr. Sudipto Kumar Mazumder, DSGI
Mr. Ajoy Kumar Singhania, Advocates

For the State

: Mr. Aditi Shankar Chakraborty, APP
Mr. Sourav Ganguly, Advocates

Heard & Judgement on : October 1, 2024

DEBANGSU BASAK, J.:-

1. Two applications for bail being CRM (DB) 92 of 2024 and CRM (DB) 483 of 2024 in connection with CBI FIR Number: RC0562021S0019 dated August 27, 2021 under Sections 147/148/149/302/201/34 of the Indian Penal Code, 1860 and read with Sections 25/27 of the Arms Act, arising out Sitalkuchi Police Station Case No. 104 of 2021 dated May 5, 2021, both of which contains renewal prayers, along with a criminal revisional application seeking transfer of the police case in which the two petitioners are seeking bail are taken up for analogous hearing, as they emanate out of the same police case.

2. Petition relates to post poll violence. A Five-Judges Bench of the Calcutta High Court, by an order dated August 19, 2021 entrusted the police case for investigation to the Central Bureau of Investigation (CBI). Pursuant to such judgment and order, CBI undertook investigation and submitted charge sheet as well as the supplementary charge sheet. Charge sheet, *inter alia*, is under Sections 302 of the Indian Penal Code, 1860 and Arms Act, 1959. Supplementary charge sheet was filed after

obtaining requisite sanction from the concerned District Magistrate for prosecution under the Arms Act.

3. Learned Deputy Solicitor General draws the attention of the Court to the criminal revisional application. He submits that the advocate conducting the prosecution case for the CBI at the trial Court was manhandled on a given date. He lodged a complaint with the police which was not registered as a First Information Report, although, the contents of the complaint disclose a cognizable offence. Rather a counter-complaint by the assaulters of the advocate concerned was registered by the police as a First Information Report and final report finding the concerned advocate to be guilty of commission of cognizable offences was submitted with the trial Court.

4. Learned Deputy Solicitor General submits that, in North Bengal, there is a Court exclusively dealing with CBI matters and such Court is located in Siliguri. He submits that, the distance between Mathabhangha Court at Coochbehar at which the present trial is pending and the CBI Court at Siliguri is approximately 120 kilometers. According to him, none of the opposite parties will be prejudiced in the event, the trial is transferred from the Court at Mathabhangha and placed with the CBI Court at Siliguri.

5. Learned Deputy Solicitor General submits that, the de facto complainant of the police case is under life threat. He draws the

attention of the Court to the observations made by the Supreme Court in one of the orders. He draws the attention of the Court to the fact that, on at least three occasions, namely, September 14, 2022, September 3, 2023 and January 21, 2024, de facto complainant lodged complaints with the police. Fearing for her life, de facto complainant is no longer in a position to reside at her residence.

6. Learned Deputy Solicitor General submits that, the initial order of transfer granted by the High Court on December 15, 2023 passed in CRR 2987 of 2022 was set aside by the Hon'ble Supreme Court purely on the ground that the opposite parties in the criminal revisional application were not served. He submits that, today, all the opposite parties are represented save and except the de fact complainant who is suffering a bereavement in her family and, therefore, is not in a position to attend the Court. He submits, on instructions, that the de facto complainant does not oppose the prayer for transfer of the trial from Mathabhangha Court to CBI Court at Siliguri.

7. Learned Deputy Solicitor General submits that, there are 28 CBI cases pending with the CBI Court at Siliguri. Therefore, there is every possibility of expeditious disposal of the trial. CBI Court deals with only CBI matters and is not burdened with any other matters.

8. On the aspect of the prayer for bail of the two private opposite parties, namely opposite party No. 3 and 13 in CRR 2987 of 2022,

learned Deputy Solicitor General submits that, as against both of them, there are incriminating materials in the case diary. Eye-witnesses recorded statements under Section 164 of the Criminal Procedure Code, where, opposite party no. 3 in CRR 2987 of 2022 stands implicated in firing the firearm which caused the bullet injury and the death of the victim. Two weapons were recovered from the possession of the opposite party no. 3. None of the weapons recovered, however, were the murder weapon. He refers to the contents of the charge sheets in this regard. He submits that opposite party no. 3 is involved in nine other criminal cases which include provisions of Sections 307 of the Indian Penal Code, 1860 as well as Arms Act, 1959 and Explosive Substance Act, 1908.

9. Referring to opposite party no. 13, learned Deputy Solicitor General submits that, so far he is concerned, there are six other criminal incidents apart from the present police case. He stands implicated in acting as the mastermind of the entire incident. He was seen carrying the crude bombs which were hurled during the incident. There are statements recorded under Section 164 of the Criminal Procedure Code implicating the opposite party no. 13 in the incident.

10. Learned advocate appearing for the opposite party nos. 4 to 20 including opposite party no. 13 in CRR 2987 of 2022 draws the attention of the Court to the provisions of Section 407 of the Criminal Procedure Code, 1973. He submits that, the application for transfer is primarily

based on Section 407(1)(a) thereof. He contends that, one singular incident of assault on the learned advocate for the prosecution, assuming not admitting such incident occurred, does not affect the fair and impartial trial at the trial Court.

11. Learned advocate appearing for the opposite party no. 13 submits that, there are several post poll violence cases which are being heard and decided by the trial Court situated within the District of Coochbehar. The Mathabhangha Court incident is a singular incident and should not be taken as an incident to warrant transfer of the trial from Mathabhangha Court to any other Court. He contends that, the ground for transfer is exaggerated.

12. Referring to the case of the prosecution, learned advocate appearing for the opposite party nos. 4 to 20 including opposite party no. 13 submits that, no sanction of the District Magistrate was obtained for a prosecution under the Arms Act, 1959. The murder weapon was not recovered from the possession of any of the opposite parties.

13. Referring to the case of the prosecution, learned advocate appearing for the opposite party nos. 4 to 20 including opposite party no. 13 submits that, taking into consideration the period of detention of opposite party no. 13 and the fact that out of 60 prosecution witnesses who are named in the charge sheet and the supplementary charge sheet of the prosecution, only one witness was examined. There is hardly any

possibility of the trial commencing any time soon. Consequently, opposite party no. 13 be enlarged on bail on such terms and conditions as the Court may deem fit and proper.

14. Learned advocate appearing for the opposite party no. 3 adopts the same submissions advanced on behalf of the opposite party nos. 4 to 20 including opposite party no. 13 opposing the prayer for transfer and seeking bail. In addition thereto, he submits that, the date of the alleged incident of heckling of the advocate for the prosecution was on February 11, 2022. He draws the attention of the Court to the certified copy of the order sheet of the trial Court annexed to the application for transfer. He submits that, thereafter, the learned advocate for the prosecution appeared before the trial Court and opposed prayers for grant of bail. The de facto complainant was examined before the trial Court. Therefore, he submits that the prayer for transfer is misplaced. There is no possibility of a fair and impartial trial being tampered on the happening of the alleged incident.

15. Learned advocate appearing for the opposite party no. 3 submits that, no further incident occurred subsequent to February 11, 2022.

16. Learned advocate appearing for the opposite party nos. 3 submits that his client is in custody in excess of three years and three months. Again there is hardly any possibility of the trial concluding any time soon in view of the number of prosecution witnesses.

17. Learned Additional Public Prosecutor appearing for the State of West Bengal submits that, State does not oppose the prayer of the CBI for transfer of the trial from Mathabhangha Court to the Court at Siliguri in the interest of expeditious disposal of the trial.

18. CRR 2987 of 2022 is at the behest of the CBI who was entrusted with the investigation of an incident of post poll violence by a Five Judges Bench of the Calcutta High Court by the judgment and order dated August 19, 2021.

19. Pursuant thereto, CBI took over the investigation and recorded statements of various witnesses. Materials in the case diary demonstrate that there are statements recorded under Section 161 and 164 of the Criminal Procedure Code.

20. In the police case, one person was murdered. Opposite party nos.4 to 20 including opposite party nos. 3 and 13 stand implicated in such murder. Amongst the private opposite parties in CRR 2987 of 2022, apart from opposite party no. 3 and 13, all other private opposite parties were granted bail either by the trial Court or by the High Court. Prayer for cancellation of bail as against one of the opposite parties failed.

21. CBI on conclusion of the investigation submitted a charge sheet as against the private opposite parties. Charges include, inter alia, Section 302 of the Indian Penal Code, 1860 and the Arms Act, 1959.

22. Supplementary charge sheet was filed against the private opposite parties under the Arms Act, 1959 after obtaining requisite sanction from the District Magistrate. Charges as against the private opposite were framed on August 10, 2023. De facto complainant was examined on October 4, 2023.

23. Prior to the framing of charges and the de fact complainant being examined by the trial Court, an incident occurred on February 11, 2022. Learned advocate appearing for the prosecution, i.e., the CBI, before the trial Court complained that, he was physically assaulted at the behest of the opposite parties. He lodged a complaint with the police. Police did not register such complaint as a First Information Report. Rather, police registered a counter complaint lodged belatedly as against such learned Advocate and submitted a charge sheet against the learned Advocate on conclusion of such investigation.

24. Court is informed that the learned advocate who was assaulted on February 11, 2022, was afforded protection of the Central Industrial Security Force (CISF). CBI arranged another advocate to appear for it before the trial Court for a given period of time.

25. Orders of the trial Court subsequent to February 11, 2022 show that the prosecution was represented by a learned advocate.

26. Prayer for transfer is based essentially on Section 407(1)(a) of the Criminal Procedure Code, 1973 which is as follows :-

“407. Power of High Court to transfer cases and appeals –

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto”

27. It is the contention of the opposite party nos. 4 to 20 including opposite party no. 13 that none of the conditions enumerated under Section 407(1)(a) of the Criminal Procedure Code, 1973 stands satisfied for the High Court to transfer the trial from Mathabhangha Court to the CBI Court at Siliguri.

28. Section 407(1)(a) permits the High Court to transfer a trial from one Court to the other whenever it is made to appear to the High Court that a fair and impartial trial cannot be had.

29. The purpose of a trial, more so a criminal trial, is to dispense justice in a free and fair manner, without being influenced by any extraneous considerations. None of the stakeholders of the trial should be subjected to any undue influence or pressure. Justice should not only be done but seen to be done. Free and fair trial is recognized as a part of the Constitutional guarantee under Article 21. A de facto complainant is entitled to a free and fair trial as much as an accused at the trial.

30. In the present case, prosecution seeks transfer of the trial. Case of the prosecution is supported by the de facto complainant and opposed by

the accused in the trial. Basis of the transfer is the assault on the advocate of the prosecution thereby vitiating the trial.

31. Assessment as to whether the apprehension expressed for transfer is reasonable or not is required to be made. There cannot be competing rights between stakeholders when the question of free and fair trial arises. If a location of a trial is not conducive for a free and fair trial it is not conducive as such for all the stakeholders. It cannot be a scenario that the location in question is free and fair for one stakeholder and not for the other.

32. Apprehension expressed should be reasonable. What would constitute a reasonable apprehension would depend upon facts and circumstances of each case.

33. That an incident occurred on February 11, 2022 is acknowledged by the fact that the opposite parties also lodged a counter police complaint. Significantly, in the incident the advocate for the prosecution was one in number while the opposite parties are numerous. Again, significantly, the complaint of the advocate for the prosecution to the police, although disclosing commission of a cognizable offence, was not registered as a First Information Report.

34. Lack of impartiality of the administration in dealing with the incident is apparent.

35. Advocate for the prosecution plays a crucial role in the administration of criminal justice. As an advocate, he is an officer of the Court. He, amongst others, decides on the evidence to be produced at the trial, on behalf of the prosecution. If he is subjected to threats, he may not be in a position to discharge his onerous duties impartially, thereby affecting a free and fair trial.

36. Apprehension expressed by the prosecution is reasonable. In adjudging whether the apprehension expressed is reasonable or not, quality and not quantity of the incident is relevant. In a given case, one incident of such gravity as to raise reasonable apprehension is sufficient. In the present case, the incident was taken note of by administration and CISF protection was extended to the advocate for the prosecution. He also withdrew from the case for a certain period. Incident is such that if it goes unnoticed would clog the wheels of administration of justice. State is not opposing the prayer for transfer. Gravity and severity of the incident stands acknowledged by the administration and the State at various levels. Requiring the trial to continue in such an atmosphere before the Mathabhangha Court will neither result in a fair nor an impartial trial. Free and fair trial is likely to get affected at Mathabhangha Court.

37. After finding the apprehension to be reasonable we need to find a suitable alternative to the Court at Mathabhangha. In doing so, we

sought the assistance of the learned counsel appearing for the respective parties in this regard.

38. We find that there is a CBI Court in Siliguri which is about 120 Kilometer away from the trial Court and entrusted to deal with CBI matters exclusively. We requested the department to obtain the National Judicial Grid data with regard to the pendency of matters before the CBI Court at Siliguri. As on date, such data shows that there are 51 cases, both pending and disposed of, before such Court. We also obtained the data with regard to Mathabhangha Court which shows pendency and disposal of 1772 cases.

39. Less number of pending cases will mean that the CBI Court in Siliguri will be adequately placed to deal with the trial expeditiously. Trial commenced on August 10, 2023 with the framing of charges. First prosecution witness was examined on October 4, 2023.

40. CBI filed a transfer application before the Hon'ble Supreme Court seeking to transfer the all post poll violence cases from out of the State West Bengal. Hon'ble Supreme Court on such transfer application was initially pleased to grant stay of all post poll violence cases in the State of West Bengal on February 14, 2024. CBI subsequently withdrew such petition on September 29, 2024. With the withdrawal of such application for transfer, the stay stood vacated.

41. Trial could not progress in view of the numerous bail applications, applications for transfer of the trial, as well as the stay granted by the Hon'ble Supreme Court.

42. Hon'ble Supreme Court clarified that, the application for bail made in respect of post poll violence cases will be considered and decided by the appropriate Court in accordance with law.

43. As noted above, we heard the learned counsels with regard to the two applications for bail also.

44. Both the opposite party nos. 3 and 13 who are renewing their prayer for bail are in custody in excess of three years. Out of 60 prosecution witnesses named in the charge sheet, only one was examined. Trial is unlikely to end any time soon.

45. Personal liberty guaranteed by the Constitution does permit the Court to grant bail to an accused where, there is hardly any possibility of expeditious conclusion of the trial. However, in the facts of the present case, we are not inclined to extend the benefit of bail to any of two opposite parties, namely, opposite party nos. 3 and 13. Against both of them, there are incriminating materials recorded under Section 164 of the Criminal Procedure Code. They are implicated in the murder of the victim. One was seen using firearms while the other was seen carrying crude bombs and is described as the kingpin of the incident.

46. That apart, there are a number of criminal cases pending against both of them which involve heinous crime.

47. In rejecting the prayer for grant of bail to the opposite party nos. 3 and 13, we also take into consideration the nature of the incident, the gravity of the offence and the involvement of such opposite parties. Opposite parties are implicated in a murder relating to post poll violence. In a democracy, it is imperative that the polling is held without any violence and in free and fair manner where, every candidate is allowed to campaign and stand for election. Violence relating to poll, either pre or during or post, is inimical to a free, fair and impartial poll. Once the poll atmosphere stands vitiated by violence, such poll may not reflect the true will of the electorate. That is inimical to a vibrant democracy. It affects the basic fabric of the Constitution. Constitution and the rule of law need to be upheld at any cost.

48. Personal liberty is a part of Article 21. So also is the right to fair and impartial trial a part of Article 21. In our view, there is no conflict between the two. However, should a conflict do arise, then personal liberty must yield to fair and impartial trial. While the first is individual based, the second is in public interest. The second affects the public at large. Curtailing personal liberty in the interest of fair and impartial trial may be imperative in certain factual matrix.

49. The de facto complainant lodged three police complaints on September 14, 2022, September 3, 2023 and January 21, 2024. Two of the police complaints are subsequent to the commencement of the trial. State did not inform us as to the fate of such police complaints, during the hearing, despite our request to the Additional Public Prosecutor to obtain instructions. Possibility of the witnesses for the prosecution being influenced exists, if the opposite party nos. 3 and 13 are enlarged on bail at this stage.

50. The incident occurred after the date of polling and is related to the poll. Enlarging the opposite party nos. 3 and 13 on bail at this stage will send a wrong message to the society. Their criminal antecedents also are one of the factors we take into consideration in not enlarging the opposite party nos. 3 and 13 on bail.

51. We take note of the fact that, learned Additional Public Prosecutor appearing for the State did not oppose the prayer for transfer of trial from Mathabhangha Court to the CBI Court at Siliguri dealing exclusively of CBI matters. This stand of the State, in our view, is an indication that State is also of the opinion that free and fair trial is not possible at the Mathabhangha Court.

52. In view of the discussions above, we allow CRR 2987 of 2022. We direct transfer of GR Case No. 440 of 2021 arising out of CBI Case No. RC0562021S0019 dated August 27, 2021 from the Court of the

Additional Chief Judicial Magistrate, Mathabhangha, Coochbehar to the CBI Court at Siliguri.

53. We are informed that, the records of GR Case No. 440 of 2021 arising out of CBI Case No. RC0562021S0019 dated August 27, 2021 (Sitalkuchi Police Station Case No. 104 of 2021 dated May 5, 2021) are presently lying at CBI Court, Siliguri consequent upon the records of such case being transferred to such CBI Court pursuant to the order dated December 15, 2023 passed in the present criminal revisional application earlier.

54. CBI Court is at liberty to proceed with the trial from the stage it deems appropriate. It will take appropriate steps for early disposal of the trial. It will not grant any unnecessary adjournments to any of the parties.

55. Accordingly, CRR 2987 of 2022 is **allowed**. CRM (DB) 92 of 2024 and CRM (DB) 483 of 2024 are **dismissed**.

56. Since the criminal revisional application was filed before the principal Bench, department here will re-number CRR 2987 of 2022 appropriately.

(Debangsu Basak, J.)

57. I agree.

(Md. Shabbar Rashidi, J.)