

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE TIRTHANKAR GHOSH**

**W.P.A. No. 14735 OF 2025**

***Biltu Hazra***

***versus***

***The State of West Bengal & Ors.***

For the Petitioner : Mr. Subhabrata Datta  
Mr. Aranya Saha

For the State : Mr. Dipanjan Datta, Sr. Govt. Adv.  
Mr. Sayan Datta

For Respondent no. 6 : Mr. Subhajit Chowdhury

**Heard On : 11.08.2025.**

**Judgement On : 11.08.2025.**

**Tirthankar Ghosh, J. :**

Petitioner is aggrieved by the fact that there has been no investigation in connection with Tarakeswar Police Station case no. 163/2025 dated 06.05.2025 under Sections 115(2)/117(2)/3(5)/329(4)/351(3)/352 of the BNS. Petitioner complains that neither the petitioner nor the victim was examined nor the medical documents were collected in course of the investigation. On the

other hand a notice was served upon the petitioner when he was 90 KMs away and the Section 35(3) of the BNSS notice reflected that a case has been registered against him being Tarakeswar Police Station case no. 186/2025 dated 19.05.2025 under Sections 329(4)/74/115(2)/351(2)/352 of BNS. Learned advocate for the petitioner submits that he has documents in his custody to substantiate that the investigating officer wanted bribe from him and in spite of informing the Superior Officer of police no steps have been taken and he has only been served with an intimation regarding the report being filed before the jurisdictional Court which is not clear as to whether a charge-sheet or a final report has been filed before the jurisdictional Court.

State has submitted two case diaries of both the cases being Tarakeswar Police Station case no. 163/2025 dated 06.05.2025 wherefrom it reflects that on conclusion of investigation charge-sheet has been submitted under the relevant provisions of BNS and the charge-sheet reflects that the prosecution has relied upon eight witnesses including the doctor namely, Dr. Subhadeep Kandar. The case diary also reflects that injury reports were collected by the investigating officer of the case, which in fact, names the accused persons. The case diary also reflects regarding the co-witnesses which have been examined including the petitioner and the victim (his wife).

Petitioner's subsequent grievance is in respect of Tarakeswar Police Station case no. 186/2025 dated 19.05.2025 wherein the police authorities on conclusion of investigation have submitted charge-sheet. Petitioner claims that

he was at the relevant point of time on the said date so mentioned in the complaint, at a distance of 90 KMs away from the place of occurrence and has been falsely implicated in connection with the instant case. The prayers are advanced for transfer of the purported investigation. On specific query learned advocate appearing for the petitioner submits that the transfer prayed for is in respect of the investigation being Tarakeswar Police Station case no. 186/2025 dated 19.05.2025. The further prayer of the petitioner is in respect of the representation made to the Superintendent of Police who did not take any action in spite of informing regarding the conduct of the investigating officer who allegedly demanded bribe from the present petitioner.

In order to substantiate his argument learned advocate appearing for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in Anant Thanur Karmuse –Vs. – State of Maharashtra & Ors., (2023) 5 SCC 802. Attention of the Court was drawn to paragraphs 42 and 48 which read as follows:

*“42. Applying the law laid down by this Court in Dharam Pal [Dharam Pal v. State of Haryana, (2016) 4 SCC 160 : (2016) 2 SCC (Cri) 259] and Bharati Tamang [Bharati Tamang v. Union of India, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] and to do the complete justice and in furtherance of fair investigation and fair trial, the constitutional courts may order further investigation/reinvestigation/de novo investigation even after the charge-sheet is filed and the charges are framed. If the submission on behalf of the accused and even as observed by the High Court*

*that once the charge-sheet is filed and the charges are framed, there may not be any order for further investigation/reinvestigation/de novo investigation is accepted, in that case, the accused may see to it that the charges are framed to avoid any fair investigation/fair trial. It would lead to travesty of justice.*

**48.** *Be that as it may, even according to the State investigating agency, the further investigation is required. As observed and held by this Court in the aforesaid decisions, the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the charge-sheet and framing of the charges cannot be an impediment in ordering further investigation/reinvestigation/de novo investigation, if the facts so warrant.”*

The main contention of the petitioner is that, submission of charge-sheet do not bar the High Court from exercising its powers under Article 226 of the Constitution of India and as such this Court is entitled to transfer the investigation to a specialized agency.

So far as the first submission of the petitioner is concerned relating to Tarakeswar Police Station case no. 163/2025 petitioner could not make out a case before this Court relating to the deficiencies of the investigation. Petitioner's main contention was that he was not examined, his wife was not examined and neither the medical documents were collected.

The case diary reflected that all the aforesaid activities were carried out by the investigating officer.

Second issue which has been canvassed by the petitioner relates to Tarakeswar Police Station case no. 186/2025 where the main contention was related to the petitioner being at a distance of 90 KMs away from the place of occurrence on the relevant date. The same is a plea of alibi which is to be taken up at the stage of defence and this Court is not in a position to assess regarding the correctness of the same.

Thirdly, is in respect of the information sent to the Superintendent of Police regarding the accusations that the investigation officer has demanded bribe.

The petitioner is not without any remedy so far as his grievance relating to the nature of investigation carried out in connection with Tarekeswar Police Station case no. 163/2025, as the provisions of Section 193(9) of the BNSS provides that the petitioner is not precluded from praying for further investigation in case he is dissatisfied with the investigation of the case.

So far as the other issue relating to the representation made to the Superintendent of Police is concerned, the law provides itself that under Section 173 of BNSS if the Superintendent of Police fails to take any action then it would be for the aggrieved person to approach the jurisdictional Magistrate.

Further the present provisions of Bharatiya Nagarik Suraksha Sanhita under Section 175(4) states as follows:

*“175. Police officer's power to investigate cognizable case.—*

*.....*

*(4) Any Magistrate empowered under Section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to—*

*(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and*

*(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.”*

The said provisions is an abundant precautionary measure which do not allow arbitrariness in respect of public servants being implicated in connection with a criminal case while they are discharging their duty and as such as a precautionary measure the learned Magistrate who receives a complaint has been authorized to call for a report from the Superior Officer containing facts and circumstances of the incident and also a factual assertion from the public servant himself. That being so the petitioner is not remediless in respect of the accusations which have been made. This is irrespective of the issue whether any inquiry is being conducted by any Superior Officer.

Having considered the subject matter for which the powers of this Court has been invoked and the reliance being placed on a judgment of the Hon'ble Apex Court where the factual circumstances are clearly distinguishable particularly, as regards charges of kidnapping/abduction being made in the said case, I am of the view that the power available with a Court and the

exercise of such powers are two different concepts. The nature of the offences complained of and the grievances addressed are too general in nature for invoking the extraordinary powers of this Court under Article 226 of the Constitution of India, particularly by ignoring the statutory remedies available under the law.

Taking into account the observations made above, I am of the opinion that no interference is called for.

Accordingly, WPA 14735 of 2025 is dismissed.

Case Diaries be returned to the learned advocate appearing for the State.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of the judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Tirthankar Ghosh, J.)**