

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. 22111 OF 2023

***Manjura Bibi.
versus
The State of West Bengal & Ors.***

For the Petitioner : Mr. Niladri Sekhar Ghosh,
Mr. Debarshi Brahma,
Ms. Sompurna Chatterjee,
Mr. Subarno Bank,
Mr. Souvik Dey.

For the Respondent no.7 : Mr. Sabir Ahmed,
Mr. Tasnim Ahmed,
Mr. Dhiman Banerjee,
Mr. Ezaz Ahmed.

For the State : Mr. Rajarshi Basu,
Mr. S.T. Mina.

Heard On : 08.04.2025.

Judgement On : 08.04.2025.

Tirthankar Ghosh, J. :

Petitioner initially approached for an investigation in respect of custodial death of her husband, consequent to an information dated 01.09.2023 submitted with the Superintendent of Police, Nadia.

The allegations made by the petitioner in the informations so furnished were to the effect that on 26.08.2023 at about 01.00 A.M. the police officials of Murutia Police Station along with the Officer-in-Charge raided her house for search of Mohan Mondal. The said Mohan Mondal happens to be the brother-in-law of the petitioner. There were certain complains in the name of Mohan Mondal at Murutia Police Station and he was released on bail by orders of Court. There were allegations also in respect of the police officers demanding a sum of money. In spite of said Mohan Mondal being on bail the police officers of Murutia Police Station along with Officer-in-Charge in a designed and calculated manner picked up the husband of the petitioner by using force and assaulted him and thereby boarded him in the police vehicle. At the relevant point of time the petitioner resisted, however, her husband was knowingly and willfully picked up by the police authorities. On the next day the dead body of the husband of the petitioner namely, Saukat Mondal was recovered. Petitioner alleges that the accused persons in a preplanned manner murdered her husband by indiscriminately assaulting him and thereafter left his dead body at the garden. Petitioner claims that she has two minor sons and daughter and she was pregnant at the relevant point of time and as such felt insecure as there were no means of livelihood available to her for sustenance. As such she prayed before the Superintendent of Police, Nadia to take action against eight police personnel which is referred to in the information furnished on 01.09.2023 as the police authorities did not act on such information which was furnished.

Petitioner approached this Court and by an order dated 18.09.2023 a Coordinate Bench of this Court was pleased to direct for registration of the FIR by assigning cogent reasons. By the same order it was directed that the police authorities shall ensure no harm is done to the present petitioner. However, the brother-in-law of the petitioner was implicated in a case on the next date i.e. 19.09.2023 by the same police station being Murutia Police Case no. 274 of 2023 under Sections 302/120B/34 of the Indian Penal Code. A Division Bench of this Hon'ble Court in CRM (A) 4531 of 2023 dated 14.12.2023 was pleased to observe in paragraph 10 which is as follows:

“10. Before parting with the order, we feel persuaded to observe here that the instant case by the police after alleged death of the brother of the present petitioner allegedly in the hands of the police might be a coincidence or a camouflage action by the police. We, therefore, direct the local CBI authority to investigate into the case to find out as to whether the present case is a counter blast to the alleged custodial death of the brother of the present petitioner. If necessary exemplary action should be taken against the police officers who are instrumental in registering the present case. The investigation by the CBI should be concluded within 60 days from the date of receipt of a copy of this order.”

Being aggrieved by the aforesaid order of transferring the investigation of Murutia PS case no. 274/2023 to the Central Bureau of Investigation the State of West Bengal preferred a Special Leave Petition (Criminal) no. 2007/2024. The Hon'ble Supreme Court while disposing of the Special Leave Petition

considered the probabilities which were (i) the incident can be a pure coincidence; (ii) but at the same, the possibility of police vendetta cannot be ruled out which is extremely serious; (iii) there are serious allegations of brutality and human rights violations against the police authorities and (iv) it was only after the order of the High Court that an FIR was registered against the police authorities. The Hon'ble Apex Court thereafter in paragraph 7 was pleased to observe as follows:

“As the High Court has directed a CBI investigation to look into the aspect of whether the present FIR against the respondent is a retaliation to the High Court's order passed in the Writ Petition filed by the respondent's sister-in-law, we do not see any reason to interfere with the impugned order as after all the truth must come out. Further, we are of the view that the anticipatory bail granted to the respondent vide the impugned order also does not warrant any interference. The criminal antecedents of the respondent, to which our attention has been brought, do not have a bearing on the grant of anticipatory bail to the respondent as those antecedents are related to matrimonial disputes and offences under the NDPS Act.”

Mr. Ghosh, learned advocate appearing on behalf of the petitioner at the stage of final hearing of the case has stressed for transferring the investigation of the case being Murutia Police Station case no. 275/2023 dated 21.09.2023 to the CBI, in view of the earlier prayer which was advanced for transferring the case to an independent agency.

The same has been opposed by Mr. Basu alongwith Mr. S.T. Mina, learned advocate appearing for the State. Case Diary has also been relied upon by the learned advocate appearing for the State. The written notes of argument have also been placed on behalf of the State of West Bengal. The written note specifically carries with it the details regarding the steps taken by the police authorities with reference to the records maintained at the police station. The main thrust of the arguments incorporates the issue relating to the cardiac arrest which was opined by the post-mortem doctor and the UD case no. 53/23 dated 26.08.2023 including the CCTV footages maintained by the police station as well as the records of the case available. Emphasis has also been laid in respect of the efforts which have been exhausted by the investigating agency while investigating Murutia Police Station case no. 275/2023 and to that effect attention of the Court has been drawn to the fourteen witnesses whose statements were recorded under Section 161 of the Code of Criminal Procedure. Two of the witnesses in respect of whom statements under Section 164 of the Code of Criminal Procedure was recorded. The seizers which have been effected and the accused persons who have been implicated in connection with the instant case. Learned advocate also drew the attention to the cautious manner in which the investigation has been carried out and to that effect narrated the chronology of steps taken in course of the investigation pursuant to the directions passed by this Court:

“1. The inquest was done by magistrate under proper videography.

2. Post-mortem was done under medical board consisted with two autopsy surgeon under proper videography and opined that in the PM report Doctors mentioned that 'Injury-Nil', 'Disease or Deformity- Nil', 'Fracture-Nil', 'Dislocation-Nil'. In final opinion as given by the Doctors is "as per our opinion the cause of death is cardiac arrest which is ante-mortem in nature.

3. As per direction of High Court and on the basis of the prayer of IO in C/W Murutia PS Case No. 275/23 both doctors opined that no further post-mortem is required." Notably, a white patch over the anterior aspect of the left ventricle was observed, suggesting sudden cardiac arrest. No external wounds were identified during the examination."

4. CCTV footage from Murutia PS Covering the period from 24th August 2023 to 27th August 2023. Which authenticate the sequence of the event delineated by the witnesses.

5. As per direction of Hon'ble High Court, IO of this case obtained certified extract of GDEs, specifically GDE NO.971 and 974, both dated 26th August 2023.

6. The victim was never arrested by the concerned Police Station. Only a raid was conducted on the basis of a information upon lodging a General Diary vide G.D. Entry No. 971 dated August 26, 2023 but on reaching the home of the Saukat Mondal, the Police found that Saukat Mondal was absconding therefore unless Saukat Mondal is arrested, there is no question of custodial death of Saukat Mondal.

7. Post Mortem report at page no. 56 of the Case Diary clearly said that it is a case of cardiac arrest.

8. Neither the Post Mortem report nor inquest indicates about any external or internal injury for the cause of death.

9. The supplementary affidavit cannot be considered a part of the writ petition since the same is affirmed by a third party outsider, who is not a party in this proceedings.”

Learned advocate for the State has also canvassed relating to the history of cases against the brother of the deceased and to that effect it was additionally submitted that there were two gangs and the deceased's brother Mohan Mondal happens to be a member of one of the gang and against whom cases under Indian Penal Code, Foreigners Act, Narcotics Drugs and Psychotropic Substances Act, Drugs and Cosmetics Act have been registered. So far as the deceased is concerned it has been alleged and specifically stated in the written notes of arguments that there were two NDPS cases pending against him registered in the year 2017. State vehemently opposes the prayer for investigation to be transferred to the Central Bureau of Investigation. Learned advocate for the State submitted that State is at the verge of conclusion of the investigation in view of the nature of the materials which have already been collected.

The Officer-in-Charge of the police station being the respondent no. 7 is represented by Mr. Sabir Ahmed, learned advocate. Learned advocate submits that the Officer-in-Charge had never been to the raid which was conducted at 01.00 A.M. on 26.08.2023. Attention of the Court was drawn to the inquest report and it was submitted that the Executive Magistrate categorically

observed in his report relating to the informations received by him at the time of conducting the inquest, which rules out the possibility of involvement of respondent no.7. It was further contended that the post-mortem report reflected that the death was due to cardiac arrest. Learned advocate tried to impress the Court that inspite of being innocent he has been implicated in connection with the instant case because of reckless allegations being made by the wife of the deceased, though none of the records of the police station including the CCTV footages would reflect the complicity of the respondent no.7 in respect of the accusations made against him.

I have considered the submissions advanced by the respective parties and also taken into account the observations of the Hon'ble Division Bench while transferring the investigation of Murutia Police Station case no. 274/2023 to the Central Bureau of Investigation which reflects that the Hon'ble Division Bench, although was of the view that the incident complained of may be coincidence or camouflage but the CBI authorities were directed to investigate whether Murutia Police Station case no. 274/2023 was a counter blast to the allegations relating to custodial death of the brother of Mohan Mondal. As such the principal case is Murutia Police Station case no. 275/2023. Further the Hon'ble Supreme Court while considering the Special Leave Petition in respect of the challenge made on behalf the State of West Bengal concurred with the view of the Hon'ble High Court, Calcutta and specifically held that the possibility of police vendetta cannot be ruled out which makes the sequence of events and the accusations extremely grave.

Having considered the series of events and without entering into the issues relating to collection of materials or the findings of the investigating agency at this stage, I am of the view that it is more important to instill confidence in the mind of the complainant who has lost her husband and has made accusations against the police authorities. Such an investigation should be unbiased, comprehensive and should be seen to be done by authorities against whom the issue relating to police vendetta is absent.

Needless to state that this Court has not dealt with the merits or the efficiency of the State agency while conducting the investigation. However, for the sake of instilling confidence in the mind of the petitioner for an unbiased and comprehensive inquiry and considering the observations of the Hon'ble Supreme Court regarding the possibility of police vendetta (which cannot be ruled out), I am of the opinion that Murutia Police Station case no. 275/2023 be transferred to the Central Bureau of Investigation (CBI).

Accordingly, the records of the case including the Case Diary and other materials be handed over to the Central Bureau of Investigation. It would be in the interest of justice that the investigating officers of both the cases being Murutia Police Station case no. 274/2023 and Murutia Police Station case no. 275/2023 be investigated by one and the same officer of the CBI.

With the aforesaid observations WPA 22111 of 2023 is disposed of.

Pending application, if any, is consequently disposed of.

Copy of the Case Diary 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.)