

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

Present:

The Hon'ble Justice Jay Sengupta

**WPA 14479 of 2023
CAN 1 of 2023
Sirajul Islam Gharami
Vs.
The State of West Bengal & Others
With
WPA 16254 of 2023
Sirajuddin Dewan @ Siraj Dewan
Vs.
The State of West Bengal & Others**

For the Petitioner : Mr. Sourav Chatterjee, Sr. Adv.
Mr. Soumya Nag
.....Advocates

**For the State in
WPA 14479/2023** : Mr. Swapan Banerjee, Id. AGP
Mr. Suddhadev Adak
Ms. Ipsita Banerjee.
...Advocates

**For the respondent
nos. 14 to 16 in
WPA 14479/2023** : Mr. Arun Kumar Maiti (Mohanty)
Mr. Tirthapati Acharya
Mr. R.R. Mohanty
....Advocates

**For the State in
WPA 16254/2023** : Mr. Suman Sengupta
Mr. Sambuddha Datta
Mr. Santanu Panja
....Advocates

**For the respondent no.7
in WPA 14479/2023**

: Mr. Sabyasachi Banerjee,
Mr. Anirban Dutta,
Ms. Shila Das

....Advocates

For the respondent no.5

: Mr. Tarak Karan

....Advocate

Heard lastly on

: 23.02.2026

Judgment on

: 21.05.2026

Jay Sengupta, J:

1. While WPA 14479 of 2023 is an application for direction upon the CBI or the NIA for registration of FIR and investigation into the offences alleged, the application being WPA 16254 of 2023 pertains to providing of police protection in respect of post-poll violence.

2. Learned senior counsel appearing on behalf of the petitioners has submitted and has relied on the written notes as follows. The petitioner and his supporters prior to the Panchayat Elections, 2023 which were scheduled to be held in July, 2023 had decided to file their nominations as independent candidates. Accordingly, on 14.06.2023 at about 11.15 a.m. the petitioner along with other candidates and supporters were on their way to file nominations in respect of Panchayat Election, 2023 in Canning Block No. 1; however, en-route they found that about 600 persons who are supporters and cohorts of the local M.L.A. namely, Paresh Ram Das (respondent no.7) being armed with deadly weapons including firearms, bombs, wooden stick,

iron rods, etc. were present in front of the office of the Block Development Officer. At the behest of the local MLA (respondent no.7), such persons had gathered to obstruct and prevent the petitioner and others from filing their nominations even as independent candidates. Upon spotting the petitioner and other candidates near the B.D.O. office, the supporters of the respondent no.7 including respondent nos.8 to 13 started hurling bombs at them. Strangely, Police personnel who were stationed just behind such unlawful assembly comprising of the cohorts of the respondent no.7, suddenly placed themselves between the petitioner and his supporters and his men and the men of the respondent no.7 and instead of taking any action against the men of the respondent no.7 and ensuring safety of the petitioner and other candidates, the Police personnel became aggressive towards the petitioner and his supporters. Suddenly, the miscreants of the ruling dispensation including respondent nos. 8 to 13 who were the men of the respondent no.7 (local MLA) began firing gunshots at the petitioner and others on the clear instigation and support of the Police personnel, particularly the respondent no.4 (Sub-Divisional Police Officer, Canning Zone) and the respondent no.5 (Inspector-in-Charge, Canning Police Station), both of whom were present at the spot. Moreover, the respondent no.4 (Sub-Divisional Police Officer, Canning Zone) and the respondent no.5 (Inspector-in-Charge, Canning Police Station) who were present at the spot illegally collected firearms from the miscreants as aforesaid and fired towards the petitioner and his supporters and companions. As a result of such attack and assault including firing, gunshot injuries were suffered by Sunil

Howlader on his left thigh; another person who was accompanying the petitioner namely, Saifuddin Mollah also sustained gunshot injury on the right side of his back whereas one Rafique Gazi sustained an injury on his finger. Though the aforesaid injury reports of the said Sunil Howlader and Saifuddin Mollah clearly indicate gunshot injuries being suffered by them, instead of registering a specific criminal case against the assailants of the said injured persons as well as the petitioner, the Police authorities of the State of West Bengal acting through one Gautam Saha, Sub-Inspector of Police, Canning Police Station, instituted a purported suo-motu criminal case against the said injured persons namely, Sunil Howlader, Saifuddin Mollah and others including the petitioner and such criminal case was numbered as Canning Police Station Case No. 338 of 2023 dated 14.06.2023 under Sections 188/143/147/149/323/325/333/353/307 of the Indian Penal Code and under Section 25/27 of the Arms Act and under Sections 3/4 of the Explosives Substances Act and under Sections 3/4 of Prevention of Damage to Public Property Act and under Section 9 of West Bengal Maintenance of Public Order Act. Be it mentioned that the aforesaid two injured persons who suffered gunshot injuries namely, Sunil Howlader and Saifuddin Mollah were arrayed as accused nos. 56 and 57 in the FIR of Canning Police Station Case No. 388 of 2023, as aforesaid. Be that as it may, the purported suo-motu case registered at the behest of the local Police Station also indicates that bombs were hurled and remnants of bombs like “burnt sutli” were recovered by State Police from the place of occurrence. Instead of arresting the assailants of the aforesaid injured persons who are

supporters of the petitioner, the Canning Police Station arrested the victims who are the supporters of the petitioner and such Memos of Arrest are annexed to the writ petition. In view of the aforesaid partisan approach and illegal action of the Police Officers attached to Canning Police Station, the petitioner arrived at a clear conclusion that he would not get any justice from them as such, vide e-mail dated 16.06.2023 containing attachments including written complaint and injury reports, the petitioner requested the jurisdictional Superintendent of Police (respondent no.5) to initiate immediate action criminal action against Dibakar Das, being the Sub-Divisional Police Officer, Canning Zone (respondent no.4), Saugata Ghosh, Inspector In-Charge, Canning Police Station (respondent no.5), the local MLA Paresh Ram Das (respondent no.7) and others for causing gunshot injuries and hurling bombs. Instead of protecting the victims of gunshot injury, the Government of West Bengal granted "Z" category security to the principal conspirator, being the local MLA (respondent no.7). It has been specifically pleaded in the writ petition that four days after the attack and assault as aforesaid, on 18.06.2023 the respondent no.7 was granted "Z" category security. Inadvertently, in paragraph 18, the date of grant of security is typed as 18.07.2023 instead of 18.06.2023. Such grant of "Z" category security to the respondent no.7 has not been denied by the respondent no.7 in his affidavit in opposition. In fact, the respondent no.7 had admitted the grant of such high-level security cover. Such stepping up of the security cover of the chief conspirator being the respondent no.7 coupled with implication of the injured persons in the attack and assault orchestrated by the respondent

no.7 and the arrest of the supporters of the petitioner in connection with a frivolous suo-motu criminal case lodged as aforesaid give a clear inference of a biased, partisan, unjust and unfair approach of the Police Administration of the State of West Bengal. The petitioner was constrained to file the instant writ petition as the petitioner's complaint dated 16.06.2023 was not acted upon and also was not likely to be acted upon in view of the biased, partisan and unfair approach of the State of West Bengal. The present writ petition was affirmed on 19.06.2023 and moved after grant of leave. A Co-ordinate Bench of this Court by order dated 20.06.2023, directed that an FIR should be registered in respect of the petitioner's complaint dated 16.06.2023 and such FIR should be registered forthwith. Considering the fact that the allegations were made against the respondent nos. 4, 5 and 7, who were high ranking officials in the local jurisdiction, the Superintendent of Police, Barasat (in a different district) was directed to nominate an officer not less than a rank of Assistant Superintendent of Police, to investigate the FIR which was purportedly suo-motu registered by Canning Police Station being Canning Police Station Case No.388 of 2023, dated 14.06.2023 along with the new FIR which was to be registered on the basis of the complaint dated 16.06.2023 lodged by the petitioner separately. By the self-same order, His Lordship was also pleased to direct the jurisdictional Superintendent of Police to post a police picket for the safety of the petitioner, his supporters and family members and also directed preservation of the relevant CCTV footage. Lastly, by the self-same order His Lordship was further pleased to direct compliance with Section 6 of the National Investigation Agency (NIA)

Act. The order was challenged by the State of West Bengal along with the Director General of Police (as appellant no.2), the Superintendent of Police, Baruipur (as appellant no.3/respondent no.3 in the writ petition), the Sub-Divisional Police Officer, Canning Zone (as appellant no.4/respondent no.4 in the writ petition, who is a proposed accused) and the Inspector In-charge, Canning Police Station (another proposed accused/respondent no.5 in the writ petition) in an intra-court appeal being MAT No. 1180 of 2023. Thus, from the nomenclature of the intra-court appeal itself, it is clear that the State of West Bengal as well as the highest Police officer of the State of West Bengal, being the Director General of Police (respondent no.2) and the highest Police officer of the District being the Superintendent of Police, Baruipur Police District (respondent no.3) lent full support to the errant Police officers being the Sub-Divisional Police Officer, Canning Zone (respondent no.4) Inspector In-charge, Canning Police Station (respondent no.5) and had filed the Memorandum of appeal as co-appellants. As such, it is clear that the State of West Bengal including its superior Police officers had no intention to take any action against the errant officers, far less taking any action against the local MLA, being the respondent no.7 and his associates and/or henchmen. Be that as it may, the aforesaid intra-court appeal being MAT No. 1180 of 2023 vide order dated 05.07.2023 upon remanding the matter back to the Hon'ble Single Bench and formulating a question of law that the Hon'ble Single Judge would decide as to whether a writ of mandamus is maintainable when a remedy has been provided under section 156(3) of the Code of Criminal Procedure. However, it was made clear

that Their Lordships had not touched on the merits of the contentions advanced by the parties. In such factual backdrop and nature of accusations, it is patently absurd and inherently improbable that any justice would be rendered to the petitioner by the jurisdictional State Police authorities inasmuch as if the petitioner has to apply under the alternative remedy available under the Code of Criminal Procedure, in that case the petitioner has to lodge a written complaint in terms of Section 154(1) of the Code of Criminal Procedure before the Inspector-in-charge, Canning Police Station (respondent no.5) against the Inspector of Canning Police Station (respondent no.5) itself as well as the Sub-Divisional Police Officer, Canning Zone (respondent no.4) who is superior in rank and is jurisdictionally superior in rank to the Inspector In-charge, Canning Police Station. Furthermore, if the petitioner is aggrieved by the inaction of the Police to initiate action in terms of Section 154(1) of the Code of Criminal Procedure, then the petitioner has to apply before the superior Police Officers in terms of Section 154(3) of the Code of Criminal Procedure. The superior Police Officer in terms of Section 154(3) of the Code of Criminal Procedure happens to be the Superintendent of Police, Baruipur (respondent no.3). The petitioner did lodge a complaint before the Superintendent of Police, Baruipur (respondent no.3) vide complaint dated 16.06.2023, the sad fate whereof is evident from the records of the present case. The Superintendent of Police, Baruipur (respondent no.3) did not take any action on the basis of the petitioner's complaint dated 16.06.2023, on one hand and instead when the first Single Bench passed an order dated 20.06.2023 directing registration of the FIR,

the said superior Police Officer in terms of Section 154(3) of the Code of Criminal Procedure accompanied the accused persons in the intra-court appeal before the Division Bench as a co-appellant and preferred MAT No. 1180 of 2023. Thus, it is clear that the alternative remedies available under Section 154(1) of the Code of Criminal Procedure, Section 154(3) and Section 156(3) of the Code of Criminal Procedure are remedies which are surely available; but the same are completely inefficacious in view of the conduct of the State of West Bengal and its Police authorities before and after filing of the present writ petition. Availing of the remedy under Section 156(3) of the Code of Criminal Procedure which can be applied for after exhausting the procedure prescribed under Section 154(1) of the Code of Criminal Procedure and Section 154(3) of the Code of Criminal Procedure would also turn equally futile inasmuch as even assuming the Learned Magistrate directs registration of a FIR on an application under Section 156(3) of the Code of Criminal Procedure being filed by the petitioner, the Learned Magistrate in his limited jurisdiction would not be able to direct any superior Police Officer and/or independent investigating agency to investigate. All that the Learned Magistrate would be entitled to order under Section 156(3) of the Code would be a direction on the Inspector In-Charge, Canning Police Station to cause an investigation against himself as well as his superior namely, the Sub-Divisional Police Officer, Canning Zone and the local MLA, being the respondent no.7 and others. Such relief, even if is granted to the petitioner by the jurisdictional Magistrate in terms of Section 156(3) of the Code of Criminal Procedure, would be absolutely inefficacious and would be of no

consequence. The affidavits-in-opposition filed by the respondent no.5 (Inspector In-charge, Canning Police Station) as well as the respondent no.7 (local MLA) would disclose that primarily they have contended that the present writ petition and the prayers made therein do not deserve to be allowed inasmuch as a suo-motu case has already been registered by the Canning Police Station being Canning Police Station Case No. 388 of 2023. In respect thereof, it is submitted that the said case is an out and out frivolous case which has been initiated by the Canning Police Station suo-motu in order to shield themselves, their superior officers as well as the local MLA and his men. Strangely enough, the counter case was never registered on the basis of the petitioner's complaint dated 16.06.2023. The law is well-settled that in respect of the same occurrence, there can always be a case and a counter case and the law is equally well-settled that they can be investigated and later tried one after another. Therefore, the stance taken by the respondents particularly, the respondent nos. 5 and 7 that registration of the Canning Police Station Case No. 788 of 2023 is sufficient appears to be absolutely illegal and outrageous inasmuch as the counter case too deserves to be registered and investigated and in the peculiar facts and circumstances of the case, such counter case as well as Canning Police Station Case No. 388 of 2023 deserves to be investigated by an independent Investigation agency namely, the CBI (respondent no.6) or the NIA (respondent no.17). Considering the nature of accusations in the complaint lodged by the writ petitioner dated 16.06.2023, there was no scope for the jurisdictional police authorities to commence any preliminary enquiry in view of the law laid

down in *Lalita Kumari v. Government of Uttar Pradesh & Anr.*, reported in 2014 (2) SCC 1. Therefore, there cannot be any question of any preliminary enquiry being conducted by any Police agency in the factual backdrop of the present case. It needs to be borne in mind that the purported suo-motu written complaint of the police resulting in registration of the Canning Police Station Case No.388 of 2023 also discloses that bombs were hurled, and gunshots were fired and remnants of the bombs like 'burnt sutli' were recovered (Please see page 35 of the writ petition). Therefore, on such score itself, the investigation of the existing Canning Police Station Case No.388 of 2023 can be transferred to the respondent no.17 (NIA) and furthermore, the petitioner's counter case vide complaint dated 16.06.2023 also can be registered by the NIA and investigated in a fair and impartial manner. The law is well-settled that in respect of the self-same allegation if two complaints are lodged against the same person, the subsequent one deserves to be quashed in view of the law laid down in *T.T. Antony v. State of Kerala and Ors.* reported in 2011 (6) SCC 181 as well as *Amitbhai Anilchandra Shah v. Central Bureau Investigation & Anr.* reported in 2013 (6) SCC 348. However, such decisions have been clarified by the Hon'ble Apex Court in the decisions of *P. Sreekumar v. State of Kerala and Ors.* reported in 2018 (4) SCC 579 and *Upkar Singh v. Ved Prakash & Ors.* reported in 2004 (13) SCC 292 as well as in *Amitbhai Anilchandra Shah (supra)* that there is a huge distinction between the two cases lodged over the self-same transaction against the same accused and a case and counter case. Such decisions have unequivocally decided and laid down the law that although the second FIR

over the self-same allegation against the same accused is liable to be quashed, but that does not and cannot mean that a counter version of a particular event is also liable to be quashed; on the contrary, it has been held that a case and a counter-case are to be investigated and later tried one after another. One of the core objections raised by the respondent nos. 5 and 7 as well as other respondents is that the complaint made by the writ petitioner straightaway to the Superintendent of Police, Baruipur (respondent no.3) vide complaint dated 16.06.23 does not adhere to the pre-requisites of Section 154(1)/154(3) of the Code of Criminal Procedure. In respect thereof, it is submitted that the complaint was directed against the Sub-Divisional Police Officer, Canning Zone (respondent no.4), the Inspector In-Charge, Canning Police Station (respondent no.5) and local MLA (respondent no.7) and others and in that factual backdrop it would have been patently absurd and inherently improbable that such complaint would have been lodged by the petitioner before the Inspector In-charge against the Inspector In-charge and his superior. The law is well-settled that procedural laws are handmaiden of justice. Procedural laws are meant to further the causes of justice and not to frustrate it. Moreover, on various occasions, the Hon'ble Supreme Court of India as well as this Hon'ble Court have directed registration of the investigation/FIR while exercising the Constitutional Writ Jurisdiction either under Article 226 of the Constitution of India or under Article 32 of the Constitution of India particularly facts and circumstances surrounding a particular case, including its urgency and the gravity of the allegations wherein remanding the complainant/victim to the regular

procedures prescribed under Section 154(1)/154(3) or 156(3) of the Code of Criminal Procedure would be nothing but an empty formality and which would, in effect, be an abuse of process of criminal law. To elucidate further, it is essential to cite relevant judgements passed by the Hon'ble Supreme Court of India and as well this Hon'ble Court, which have consistently followed and emphasized the principle narrated herein before – i) Unreported decision of the Hon'ble Supreme Court of India in SLP (Cri) No. 5883 of 2020; Sindhu Janak Nagargoje v. The State of Maharashtra & Ors.); ii) Order dated 18.09.2023 passed by this Hon'ble Court in WPA 22111 of 2023 (Manjura Bibi v. The State of West Bengal & Ors.); iii) Order dated 29.08.2023 passed by this Hon'ble Court in WPA 20602 of 2023 (Rabin Majhi v. The State of West Bengal & Ors.); iv) Judgement and Order dated 04.07.2023 passed by this Hon'ble Court in WPA 15692 of 2023 (Pinki Halder v. The State of West Bengal & Ors.); v) Order dated 07.08.2023 passed by this Hon'ble Court in WPA 16735 of 2023 (Silon v. The State of West Bengal & Ors.)); vi) Order dated 13.07.2023 passed by this Hon'ble Court in WPA 15911 of 2023 (Bablu Naskar v. Election Commissioner & Ors.). Last, but not the least, it is respectfully submitted that the law is well-settled that the proposed accused persons do not have any right of hearing prior to registration of an FIR. In this backdrop, reference may be made to the celebrated decision of Anju Chowdhury vs. State of Uttar Pradesh, reported in 2013 (6) SCC 384. The second writ petition is about security to be provided to the petitioner. The arrangement may continue for some time.

3. Learned counsel appearing on behalf of the respondent no. 7 has submitted and has relied on the written notes as follows. The writ petition is an accused in connection with Canning Police Station Case No. 388 of 2023 dated 14.06.2023 under Sections 188, 143, 147, 149, 323, 325, 333, 353, 307 of the Indian Penal Code, 1860 and Sections 25 and 27 of the Arms Act, Sections 3 and 4 of the Explosive and Substances Act and Sections 3 and 4 of the PVB T Act and Section 9 of the MPO Act. The petitioner has contended in the writ petition that the petitioner was closely associated with the present ruling political party of the State of West Bengal. The extent of involvement of the petitioner was that the petitioner was a regional president (Anchal President) of the said area. The petitioner had contended that on 14.06.2023 when the petitioner along with men and agents had gone to file their nomination with respect to the Panchayat election, the petitioner and his associates were confronted with huge number of people who were restraining the petitioner and his associates. The petitioner states that the petitioner in the writ petition had contended that the petitioner after two days i.e., on 16.06.2016 had informed the office of the Superintendent of Police, Baruipur Police District regarding the involvement of other anti-socials who had acted illegally with the aid and assistance of the police personnel and the SDPO to restrain and assault the petitioner and his associates. The petitioner had annexed a representation. The petitioner contended that the said representation was not considered and as such the petitioner had preferred the said writ petition after three days on 19.06.2023. That from the documents which are available with the writ petition, it is apparent that the

police officers specially being the Superintendent of Police, Baruipur Police District upon a requisition made with the office of the District Magistrate, South 24 Parganas had requested deputation of Executive Magistrate in apprehension of a breach of peace owing to filing of nominations of Panchayet General Election of 2023. In respect of such requisition, the District Magistrate vide his Memo no. 867(4) /JM on 14.06.2023 had deputed one Mr. Surajit Bhar, Executive Magistrate from 10 a.m. onwards to maintain law and order during the process of filing of nomination. The said letter is at page no. 32 of the writ petition. From the documents, further it appears that on 14.06.2023 itself, the Sub-inspector of Police namely Gautam Saha had forwarded 27 accused persons after there being arrested with the statements that on 14.06.2023 at about 11:00 a.m. in the morning under the leadership of the petitioner and others, various people gathered at Canning Hospital more and without any prior intimation started road block in front of the Hospital gate. They started provocation to block the main road and create nuisance. On duty police team requested them to remove the same as it was between two gates of Canning SD Hospital and on a very busy Baruipur Canning Road. That due to non-adherence of the request of the police officers a clash broke out and the Executive Magistrate was present there had declared the mob as an unlawful assembly. After the same, the anti-socials miscreants started firing and two persons' sustained injuries. Various Police officers including the SDPO, IC, Canning and other sub-inspectors also sustained injuries. Thereafter, the police authorities had arrested 27 persons, seized lot of articles and were produced before the Court

of the ACJM, Baruipur. Further, from the documents annexed the arrest memos of the said 27 peoples are annexed to the writ petition. Thereafter, appears that an email were sent on 16.06.2023 after two days of the incident with the office of the SP, Baruipur, District South 24 Parganas wherein for the first time it appears that the petitioner had stated that the miscreants who were present in the unlawful assembly were supporters of the respondent no. 7. No further complaint was made with any other authority and writ application praying for transfer of investigation to Central Bureau of Investigation (in short 'CBI') and/or National Investigating Agency (in short 'NIA') were sought for in this writ which was filed after 3 days from the said letter of complaint on 16.06.2023. The writ petition was affirmed on 19.06.2023 and by an order on 20.06.2023, the said writ petition was disposed of by the learned Single Bench of this Court directing the handover of all materials to an Assistant Superintendent of Police who was nominated by the Superintendent of Police, Barasat for appropriate investigation. That from records, it appears that the said order dated 20.06.2023 challenged by the State of West Bengal before the Division Bench in MAT No. 1180 of 2023. Had set aside the order of the learned Single Bench and remanded the matter for further hearing. The petitioner could not reasonably satisfy regarding non-availing of remedy under the provisions of Code of Criminal Procedure, 1973 - From the writ petition, it appears that the petitioner herein who is also an accused in the First Information Report (in short 'FIR') which was registered for investigation and, thereafter, concluded a charge sheet it appears that the petitioner himself who is an accused has alleged various

acts of illegalities on other miscreants who were allegedly acting under the directions of the respondent no.7. Further, the allegation was that the miscreants had acted in aid and in assistance of the police officers who were present at the spot who had tried disburse the unlawful assembly which was declared by the Executive Magistrate. On perusal of the allegation which is clearly aimed at bringing out a new story only on the fact that there was aid an assistance of police authority in such assault on the petitioner. The said version is not only unbelievable but also completely untrue. That from the order of the Division Bench, it appears that the Division Bench had considered the judgments and the submissions as made by the petitioner regarding why the petitioner could not avail remedies as provided under the provisions of Code of Criminal Procedure and legislated under the 154(3) of the Code of Criminal Procedure, 1973 and 156(3) of the Code of Criminal Procedure, 1973. The Division Bench being not satisfied had categorically observed that "We are not persuaded to accept such brought submission stating that in all cases the remedy under Section 156(3) of CrPC is ineffective." The said fact clearly shows that the petitioner had acted in haste and did not avail the remedy as provided under the Code of Criminal Procedure, 1973. In the event, there is denial of registration of the FIR. Further, it will appear that the police had registered an FIR on 14.06.2023 regarding the selfsame incident which was alleged off by the petitioner in its purported letter dated 16.06.2023. The said letter contents allegations regarding the same incident with additional suspicion of indirect involvement of the respondent no.7 and purported involvement of the police authorities.

Due to such suspicion, it is most humbly prayed that this Court should not entertain a writ petition from mere denial of registration of an FIR when there are efficacious remedies available under the Code of Criminal Procedure, 1973. The Division Bench in not being satisfied with the arguments regarding ineffectiveness of availing remedies under Section 156(3) of the Code of Criminal Procedure, 1973 had demanded the matter back for fresh consideration. It is most humbly stated that the petitioner could not satisfy as to why this Hon'ble Court to exercise its constitutional jurisdiction to either interfere and/or direct registration of the FIR in exercise of its constitutional writ jurisdiction only because there is a denial of the police authorities of having registered an FIR. Further, the said complaint dated 16.06.2023 was not even made to the Officer-in-charge, but an email which was sent to the SP, Baruipur Police Station with purported allegation. It is in the backdrop of such facts and especially in light of the observation of the Division Bench. It is stated that the petitioner has miserably failed to satisfy that this Court either should entertain the writ petition and/or passed direction for registration of the FIR directly without the petitioner having availed the remedies as legislated under the law. Letter dated 16.06.2023 is vague and malicious against the respondent no.7 - That on perusal of the letter annexed at page no. 92 of the writ petition and as has been quoted earlier, it is apparent that the petitioner's sole intention was to implicate the respondent no.7 in any manner for the reasons best known to them. The petitioner being an accused himself in the proceeding has complaint regarding involvement of the petitioner though, admittedly, the respondent

no.7 was not present at the scene occurrence. It is on mere suspicion of the petitioner that the petitioner intends to prosecute/implicate the respondent no.7 which should not be entertained by this Court. The said representation dated 16.06.2013 names other miscreants who have been investigated by the Investigating Agency and their role have also been looked into by the Investigating Agency. The respondent no.7 herein has been made a witness and has been interrogated by the Investigating Agency. The Investigating Agency while submitting the charge sheet had named people who were named in the purported representations as an accused as and how their role to establish in the alleged offence. Therefore, the respondent no.7 humbly prays that this Court should not take cognizance of the said letter dated 16.06.2023 qua the respondent no.7 as the same is not only malicious, vague but also vindictive so far the respondent no.7 is concerned. Presence of An Executive Magistrate - That from the documents especially appearing at page no. 32 of the writ petition it will be apparent that an Executive Magistrate was posted at the place of occurrence by an order of the District Magistrate. It was in presence of the Executive Magistrate with the miscreants had started behaving unruly and started their clash with the police officers. It was the Executive Magistrate who had declared the said mob unruly and thereafter, directions were passed so that the mob could be disbursed. In disposition of such mob, the police officers had also sustained injury as will appear from the written complaint filed by the police Officer with the Inspector-in-charge of Police Station. The presence of the Executive Magistrate who is also a competent witness in the charge sheet will

clearly shows that the allegations which was leveled by the writ petitioner to its purported representation dated 16.06.2023 is absolutely vague, arbitrary and illegal. Conclusion of investigation and the materials collected - This Court while exercising its constitutional writ jurisdiction has ample power to look into such statements which has been recorded and made a part of the case diary as appearing from the charge sheet filed by the Investigating Agency. On perusal of such statements, the falsity of the complaint and the vindictiveness of the writ petitioner will be apparent. In light of such facts the writ petition which is a counter version of the petitioner herein should not be considered. It is further been brought to the knowledge of this Court that investigation resulted in the charge sheet wherein 67 peoples of the mob has been identified and made an accused in the charge sheet. Further in the charge sheet Section 307 of the Code of Criminal Procedure and Sections 25 and 27 of the Arms Act are also could for the purpose of establishing the guilt of each and every accused to have played respective roles while the trial commences. Therefore, the submissions of the petitioner regarding the police to have aided the miscreants in shooting are absolutely illegal and the same should not be entertained by this Court. The respondent states that during pendency of the writ petition, the investigating agency had proceeded with the investigation and had filed a charge sheet being charge sheet no. 759 of 2023 dated 24.12.2023. It is to the knowledge of the respondent no.7 that the said charge sheet was taken cognizance of charges were framed in respect of 67 accused persons they were to be trialed by the concerned competent Court. It is in backdrop of such facts that the trial stood stayed by

operation of an order of this Court. On perusal of the charge sheet it will appear that 67 persons irrespective of sides as have been alleged by the petitioner, have been made an accused and 48 peoples out of whom most are police officers have also been made witnesses to prove the case. The two injured persons have been made an accused owing to their role, however, the same shall not deny them from opportunity of deposing as a witness if they think fit in course of the trial. In existence of accused witnesses, documents materials on record it will be improper at such a stage who either re-investigate/further investigate or transfer investigation of the present case. The accused is a competent witness and scope of 319 - It is stated that the investigation has resulted in the charge sheet and the purported representation of the petitioner have also been considered in the investigation as will appear from the list of accused which names people who were named in the purported representation dated 16.06.2023 by the petitioner herein. The petitioner presently is aggrieved by non-registration of the FIR based on the purported representation. However, the Court would also consider that the said representation was not only considered but the representation was also looked into while the investigation was made by the agency and charge sheet was submitted in connection with the instant case. It is vehemently stated that the accused including the petitioner herein is a competent witness in a trial and if the accused comes up with another version in their examination the Trial Court is very well equipped to issue summons process against new accused who allegedly have been not made accused as per the petitioner in the charge sheet. However, from the

tenor of the writ petition and the purported representation it appears that the petitioner are wanting nothing except impleading the respondent no.7 as an accused who was admittedly not present at the scene of occurrence. It is merely on a suspicion and vindictiveness as the respondent no.7 is being made an escape good and is attempted is to be falsely implicated in connection with the instant proceeding. It is most humbly stated that the Trial Court while proceeding with the Trial is not only equipped but also competent to add new accused in the event the same and is an espoused through various evidence. For the same this Court need not exercise its constitutional writ jurisdiction to interfere in an investigation which was already resulted in the charge sheet, charges have been framed and the Trial is pending. The accused have no right to choose investigating agency - From the pleadings and the prayers of the writ petition, it is apparent that the petitioner who is also an accused has tried to espouse his cause that it is only CBI or the NIA who can investigate into the purported representation of the petitioner. It is most humbly stated that the petitioner being an accused does not have the right to pray for direction upon a particular investigating agency for investigating into the allegations and/or statements which are made by him. It is only in the event that the courts finds, if necessary the same can be transferred to and choice of the investigating agency which the Court thinks fit. In the instant case from the prayers of the writ petition it will be apparent that the petitioner had specifically prayed for the CBI and the NIA which is not allowed. The said prayers being illegal and arbitrary, the writ petition is ought to be dismissed by this Court. In absence of there being

any requirement for interference the respondent no.7 humbly prayed that the writ petition should be dismissed and appropriate direction be passed expedite trial which will actually bring out the truth and consequence be followed.

4. Learned counsel representing the petitioner no. 5 has submitted and has relied on the written notes as follows. The improbability of the allegations in the complaint would be evident from the following facts: i) Neither the SDPO Canning nor O/C Canning were present at the time of firing. Both of them were with the Executive Magistrate, Surajit Bhar were at the nomination centre (which is approx. 02 km from the Canning Hospital more). Upon hearing sound of firing, the SDPO Canning O/C Canning, and the Executive Magistrate reached the Place of Occurrence (POA); ii) The police team headed by the SDPO Canning and O/C Canning tried to restrain the rival groups. However, as the respective groups who were nearly 4000 in number, started to hurl bricks, the Executive Magistrate declared the mob as unlawful after which the police team did not mild lathi charge and dispersed the mob; iii) Had there been any firing from the police party, the Executive Magistrate would have had to file a report recording such police firing. There is no such report by the Executive Magistrate; iv) In the course of investigation, the statement of the Executive Magistrate U/S 161 has also been recorded which does not speak of any firing by the police, a copy whereof is attached herewith and marked as Annexure "A"; v) The persons who received the gun shot injuries under videography stated that firing was done by Paresh Ram Das's group and the same has been recorded with

videography and preserved; vi) Moreover, in the enquiry conducted by the Additional Superintendent of Police, Baruipur as per order of the Superintendent of Police, Baruipur, there was no evidence found to substantiate the allegations against the police officers.; vii) The CCTV footages were collected of the incident and forwarded to the SFSL, Kolkata for examination and report. The report was received on 12.12.2024 vide docket no. 7686/24/PHY_CYB. It has been stated, inter alia, that there were no police presence detected during the shifting of the injured persons when they sustained injury. Moreover, no firing incident could be found in the footages of Exhibit A and also the CCTV footage ARNABROY_ch4_main20230614110000_20230614120000 on 14.06.2023 in time interval 11.44 hrs. and 11.47 hrs; viii) In another report no PHY/PHY_CYB/8500/2024/7128/FSL dated 18.12.2024 it was noted that exhibit XX, XX1, XX2 (photos of police personnel i.e., SDPO Canning and IC Canning) found numerous times in the multiple video footages of Ex: - A vide docket no 7686/24/PHY_CYB. It was also noted that No police personnel figured in exhibit XX, XX1, XX2 (photos of police personnel i.e., SDPO Canning and IC Canning) were found carrying any sorts of fire arms in video footages of Ex: - A vide docket no 7686/24/PHY_CYB. The complainant filed by the police and that the complaint made by the writ petitioner can't be termed as a counter-complainant for the following reasons: i) The clash was between two rival groups of TMC and the police merely disbursed both the groups; ii) Had both rival groups made complaints, several FIRs could have been recorded as case and counter-case as they were rival groups; iii) The

police herein was not a rival group. The police disbursed both the groups. Police lodged FIR against both groups. Hence, the complaint filed by the police and the complaint by the petitioner cannot be termed as a case and counter case; iv) Police has filed the Charge Sheet in this case and which leave to file supplementary Charge Sheet against 67 persons so far including persons from both rival groups. Maintainability and merits of the writ petition, inter alia, praying that the investigation be handed to the CBI on the grounds stated herein: i) It is now settled law that while the writ jurisdiction of the High Court has the power to transfer any matter to the CBI, the same is not a matter of routine and can be applied only in exceptional circumstances. In the instant case, the matter is being investigated with utmost diligence as will be evident from the Affidavit-in-opposition filed by the respondent authorities and reports submitted before this Court on several occasions; ii) The writ petition has been filed, inter alia, for transfer of the case to the Central Bureau of Investigation (CBI). Contrary to the allegations of the petitioner, the investigating agency has been taking steps and collecting all the required evidence and has not acted in haste to close the matter. The transfer of an investigation to the CBI is not a matter of routine. Precedents of the Hon'ble Supreme Court of India emphasize that it is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances"; iii) One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies." This observation must be read with the observations by the Constitution Bench in CPDR, West Bengal that mere allegations against the

police do not constitute a sufficient basis to transfer the investigation; iv) It is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by the CBI, such prayer should not be granted on mere asking. A Constitution Bench of the Supreme Court, in the case of the State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal, reported in (2010) 3 SCC 571; v) In the above decision, it was also pointed out that the Apex Court in Secretary, Minor Irrigation & Rural Engineering Services, U.P. v. Sahngoo Ram Arya, (2002) 5 SCC 521, had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency; vi) The above principle has been reiterated in K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai, (2013) 12 SCC 480; vii) The Supreme Court has reiterated that an investigation may be transferred to the CBI only in “rare and exceptional cases”. One factor that courts may consider is that such transfer is “imperative” to retain “public confidence in the impartial working of the State agencies.”; vii) In Romila Thapar v. Union of India, (2018) 10 SCC 753, the Supreme Court noted that dictum in a line of precedents laying down the principle that the accused “does not have a say in the matter of appointment of investigating agency.” In reiterating this principle, this Court

relied upon its earlier decisions in *Narmada Bai v. State of Gujarat*, (2011) 5 SCC 79, *Sanjiv Rajendra Bhatt v. Union of India*, (2016) 1 SCC 1, *E. Sivakumar v. Union of India*, (2018) 7 SCC 365, and *Divine Retreat Centre v. State of Kerala*, (2008) 3 SCC 542. Reliance is also placed on *CBI v. Rajesh Gandhi* reported in (1996) 11 SCC 263; *Himanshu Kumar and Ors. V. State of Chhattisgarh* reported in 2022 SCC Online 884. Maintainability and merits of the writ petition on the ground that a second FIR ought not to have been recorded on the complaint of the petitioner: i) It has been held that under the scheme of the provisions of the Criminal Procedure Code, only the earliest or first information received in regard to a cognizable offence satisfies the requirement of Section 154 of the Criminal Procedure Code; ii) Reliance is placed on the judgement in the case of *T.T. Antony v. State of Kerala* reported in (2001) 6 SCC 181; iii) Further, reliance is placed on the judgement of the Supreme Court in *Amitbhai Anil Chandra Shah v. CBI* reported in (2013) 6 SCC 348, where the Hon'ble Supreme Court after considering several judgements as cited by the parties held that "filing of the second FIR and fresh charge sheet is violative of fundamental rights under Article 14, 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the Court has taken cognizance. This Court in the matter of complaints against ED officials has stayed the investigation, the unreported orders are as follows. WPA 10332 of 2024 (*The National Investigation Agency Vs. the State of West Bengal and Ors.*) dated 10.04.2024, CRR No. 164 of 2024 (*Enforcement Directorate Vs. State of West Bengal and Ors.*) dated 11.01.2024.

5. Learned counsel appearing on behalf of the State in WPA 14479 of 2023 has submitted as follows. Over the incident of 14.06.2023, a suo moto FIR was duly lodged by the police authorities and was properly investigated. The FIR was not at all a partition or a one-sided one. It indicated wrongdoings by both the sides. In fact, a charge sheet was submitted by showing persons as accused from both the sides. As per T.T. Antony's case (supra), there cannot be two FIR's over the self-same incident and/or allegation. Here, the subsequent complaint by the petitioner can be treated as a subsequent statement made in respect of first criminal proceeding. The normal procedure for registering a criminal case in the event an FIR is not registered by the local police is to first approach the concerned Superintendent of Police and then file an application under Section 156(3) of the CrPC. A writ petition cannot be the first recourse seeking filing of an FIR. On this, reliance is placed on a decision of the Hon'ble Apex Court in *M. Subramaniam & Anr. Vs. S. Janaki & Anr.*, reported at 2020 16 SCC 728. Moreover, an accused in a case cannot choose the investigating agency, which would investigate the case against him. A reference is made to the criminal antecedents of the petitioner, Sirajul Islam Gharami and respondent nos. 8, 9 and 12 in the said writ petition.

6. Learned counsel for the State in WPA 16254 of 2023 has submitted as follows. It is the duty of the State to provide security to every citizen, however, it is not an absolute right for someone to claim personal security. It cannot be provided automatically, i.e., merely on asking. There has to be a threat perception assessment first. The person making the application and

his circumstances has to qualify for the same. Since there is no witness protection scheme in force in India the Witness Protection Scheme, 2018 draft as incorporated by the Supreme Court of India in Mahender Chawla & Anr. Vs. Union of India & Ors., reported in (2019) 14 SCC 615 is followed. The same as quoted in the judgement is being reiterated below except the application draft provided.

7. I heard the learned counsels appearing for the parties, perused the writ petition, the affidavits, the case diary and the written notes of submissions.

8. First, it is necessary to highlight the context set by the Hon'ble Appellate Court for dealing with the first writ petition. By an order dated 05.07.2023 passed by the Division Bench in MAT 1180 of 2023, the order dated 20.06.2023 passed by a Co-ordinate Bench of this Court sitting singly was set aside and the matter was remanded back for fresh consideration. While doing so, the Appellate Court held that it was conscious of the fact that there were exceptional circumstances wherein it had been held that the remedy under Article 226 of the Constitution of India was not fully barred. Nevertheless, the Court was required to pose a question to the writ petitioner at the first instance as to why the writ petitioner had bypassed the remedy available under Section 156(3) of the Code of Criminal Procedure, 1973.

9. Therefore, the scope of remand of the first writ petition is more to decide whether on facts, the petitioner was justified in approaching this

Court directly for registration of an FIR and not about whether such exercise can at all be done in any case.

10. The second writ petition seeks providing of security in respect of post-poll violence.

11. On 14.06.2024, the two writ petitions were assigned to this Bench for disposal.

12. Now, as regards the first writ petition, quite indubitably two FIRs cannot be lodged over the same set of allegations. On this, reliance may be placed on T.T. Antony's case (*supra*). However, it is also quite abundantly clear that when two FIRs give out opposing or divergent versions of an incident or incidents, then a second FIR is maintainable as a counter FIR. Reliance is placed on Upkar Singh's case (*supra*). In fact, in a recent decision, the Hon'ble Apex Court has also held that if a larger conspiracy is alleged in respect of a set of facts on which an FIR had already been started, a second FIR would be maintainable in an appropriate case. On this reliance is placed on *State of Rajasthan vs. Surendra Singh Rathode*, 2025 SCC Online SC 358.

13. On 14.06.2023, certain incidents happened and a suo moto FIR was lodged from the end of the local police. The FIR did contain a version that there was a fight between two groups, bombs were hurled and several persons received injuries. Although the accused were hauled up from both the sides, it is alleged by the petitioner that hardly any significant number of miscreants were shown as trouble makers from the other side. Incidentally,

three persons from the side of the petitioners who themselves received bomb blast injuries were shown as accused. It is also alleged that the police played a partisan role at the behest of the local MLA in showing allegiance to the then ruling party of the State i.e., the TMC. The first FIR quite obviously does not contain the version given in the second complaint filed by the present petitioner that, among other things, the police personnel had taken illegal arms from the hands of the miscreants owing allegiance to the said former ruling party belonging to the opposing faction and started attacking the present petitioner and his associates.

14. However improbable the above allegations may appear to the private respondents, these are purely questions of fact that can be gone into only by a proper investigation. Totally shutting out such allegations, not contained in the first suo moto FIR, but forming a part of the second complaint, without any further scrutiny would not be appropriate, by any stretch of imagination. Such allegations about gross illegality committed by the police personnel at the behest of the other side cannot be formally negated merely on the premise that an Executive Magistrate, present there, did not say anything about it. It is not for the police authorities to reject a complaint merely because they did not subscribe to the views of or the allegations made by the complainant. What was of prime importance was to see whether a prima facie case was made out or not.

15. If a cognizable case is alleged by an informant, it is the bounden duty of the concerned police authorities to register an FIR over the said

allegations. On this, reliance is placed on a decision of the Constitution Bench of the Hon'ble Apex Court in Lalita Kumari's case (supra).

16. The most absurd thing and a patently wrongful exercise of power was that the investigation of the suo moto criminal case started earlier was done by the Police Officers of the same Police Station against which the present petitioner had made serious allegations in his complaint. This was a brazen violation of the principles of natural justice.

17. It is settled law that in the normal course, a complainant has to approach the local police station for registering an FIR. If refused, he is supposed to bring the same to the notice of Superintendent of Police and thereafter, he has a remedy of filing an application under Section 156(3) of the CrPC (corresponding to Section 173(5) of the BNSS).

18. In fact, the decision in Aleque Padamsee (supra) passed in this regard has been taken into consideration by a Constitution Bench of the Hon'ble Supreme Court in Lalita Kumari (supra).

19. In Lalita Kumari (supra), it was, inter alia, held as under:

“.....
Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an

inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should

not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

.....”

20. Therefore, as per the decision in Lalita Kumari (supra), among other things, there were severe consequences to follow for any violation of the principle that if a cognizable offence is made out, an FIR should positively be registered. Appropriate action was to be taken even against the errant Officers.

21. When such stringent action was contemplated by the Hon’ble Constitution Bench in the event of violation of the direction to register an FIR if a cognizable case is made out, a necessary corollary would flow that such FIR should be registered at any cost and therefore, if it would be open to the Courts of Law to take appropriate action to ensure that the principles laid down by the Constitution Bench are followed. If that is to be done, then and in such exceptional cases, the Constitution Courts would be entitled to exercise writ jurisdiction to ensure compliance of the principle that an FIR should be registered if a cognizable case is made out.

22. Such digression from the normal procedure would obviously be in appropriate and exceptional cases whether there is an imminent need to promptly register the FIR. For instance, if an offence of rape is committed by, say, a relative of a high functionary of a State or an extremely wealthy and influential person and in exercise of undue influence upon the local police authorities, which is not totally unheard of, no FIR is registered against such accused in time, the victim of such crime or her relative cannot be made to struggle to have such FIR registered. More importantly, evidence available has to be collected at the earliest in such cases. Taking the example a little further, if refusal to register an FIR takes place on the date of occurrence, i.e., the Day One, the informant might have to approach the Superintendent of Police on the Day Two, and then the learned Magistrate on the Day Three. Then the Magistrate may seek response from the police and this may go beyond the Day Four, to even consider the question of registration of FIR. By that time, valuable evidence may be lost. Relevant samples not yet collected may become insufficient for a testing, like in case of DNA test. There are several other examples of offences like murder, grievous hurt, dacoity or under the Explosive Substances Act that may require equal promptitude in registration of the FIR and in investigation of the offences that would include collection of evidence. It would be antithetic to the cause of justice to make the victim wait for so long to complete the formalities of registering an FIR.

23. Therefore, in appropriate case or cases involving such exigency, a Constitution Court may have to intervene to have justice done to a citizen. Quite aptly, the decision on the Lalita Kumar's case (supra) provides for

taking such immediate action in respect of cases involving cognizable offences.

24. In fact, the Hon'ble Supreme Court in some cases and this Court in certain cases have exercised such power to direct registration of FIR. Reliance may be placed on *Sindhu Janak Nagargoje (supra)*, *Manjura Bibi (supra)*, *Rabin Majhi (supra)*, *Pinki Halder (supra)*, *Silon (supra)* and *Bablu Naskar (supra)*. On the other hand, the cases where the complainant was asked to approach the Magistrate mostly related to more mundane allegations like cheating or criminal breach of trust.

25. Incidentally, the above referred proposition has been followed by the Appellate Court herein. In effect, the Division Bench directed this Court to find out whether on the present facts, the petitioner was justified to approach this Court directly.

26. It is well settled that if a victim of non-registration of FIR wants an investigation to be done by the CBI or the NIA, it would not suffice to approach a Magistrate. A Magistrate cannot direct registration of FIR and investigation by police beyond the local police station. Therefore, the present petitioner who wanted an investigation by the CBI or the NIA could not have prayed for the same before the concerned Magistrate. On this, reliance was placed on *State of CBI vs. State of Rajasthan & Anr.*, (2001) 3 SCC 333.

27. In the present case, the allegations made in the complaint by the petitioner run contrary to the version given in the suo moto FIR, which quite

obviously does not incorporate any allegations that the police were helping one side, even taking arms from the said side and attacking the other side.

28. Moreover, the allegations made in the second complaint make out a prima facie case and it is not open either to the local police authorities or to this Court to test the veracity of such allegations at this stage. As the allegations made out a cognizable case, it was incumbent upon the police authorities to have lodged an FIR, which they failed to do. Among other things, this is a clear violation of the ratio laid down in Lalita Kumari's case (supra).

29. In this case, serious allegations have been made against police officials and even an MLA. Contrary to the norms of any fair play, a case with allegations against the police officials of a police station was sought to be conducted by officers of the same police station.

30. That apart, a prayer for registration of an FIR and investigation by the NIA or the CBI could not have been made before a Learned Magistrate. A reference has already been made to the decision in CBI vs. State of Rajasthan (supra). It is another thing whether such prayer is allowed or not.

31. Thus, the question posed by the Appellate Court has to be answered in the affirmative that on the present facts, the writ petitioner in the first writ petition was entitled to move this Court seeking such appropriate reliefs.

32. In view of the above discussions and in the interest of justice, the respondent authorities are directed to register the petitioner's complaint as an FIR. The alleged offences shall be investigated by the CID. The ADG, CID

shall constitute a Special Investigation Team (SIT) to be headed by an IPS officer to conduct such investigation. Materials collected, if any, in connection with the erstwhile Canning Police Station Case No. 388 dated 14.06.2023 shall be taken into consideration in the newly registered case. The CCTV footage and the other evidence that the Appellate Court had directed the State to preserve may also be referred to in this regard.

33. As regards the second writ petition being WPA 16254 of 2023, after hearing the parties, appropriate directions were passed to provide security to the petitioners. Certain specific incidents had been taken into consideration.

34. In the interest of the justice, let the protection granted in the second writ petition continue till completion of investigation of the newly registered case.

35. With these observations and directions, the writ petitions being WPA 14479 and 16254 of 2023 are disposed of. The connected application also stands disposed of.

36. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Jay Sengupta, J.)