

06.10.2024

Item no.1  
Court No. 35.  
dc.

## IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

**CRR No.4515 of 2024**

The State of West Bengal

-vs-

Union of India & Anr.

Mr. Kishore Dutta, Ld. A.G.,  
Mr. Debasish Roy, Ld. P.P.,  
Mr. Rudradipta Nandy, Ld. A.P.P.,  
Ms. Sanjana Saha,

...for the petitioner/ State

Mr. Dhiraj Trivedi, Ld. D.S.G.I.,  
Mr. Bankim Pal

... for the Union of India.

Mr. Billwadal Bhattacharyya,  
Mr. Chandan Kumar Saha,  
Mr. Gautam Sardar,  
Mr. Bhaskar Bhattacharyya,  
Mr. Apurbo Mondal,  
Mr. Dibakar Biswas,  
Mr. Raj Sharma,  
Mr. Pradip Kumar Mondal

... for the Opposite Party No.2

Mr. Samim Ahmed,  
Mr. Chandan Hossain,  
Mr. Rajit Lal Moitra,  
Mr. Arnab Sinha,  
Mr. Arka Ranjan Bhattacharyya,  
Mr. Arya Bhattacharyya,  
Ms. Ambiya Khatun,  
Mr. Enamul Islam.

... for the family member of the deceased.

. Affidavit-of-service filed by the petitioner be kept with the record.

Vakalatnama filed on behalf of the opposite party no.2 be also kept with the record.

The State of West Bengal has approached this Court with an

application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973/ Section 528 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The subject matter of challenge before this Court relates to the order dated 5<sup>th</sup> October, 2024 passed by the learned A.C.J.M., Baruipur in connection with Joynagar Police Station case no. 793 of 2024 dated 5<sup>th</sup> October, 2024 under Sections 137(2)/140(3) of the Bharatiya Nyaya Sanhita, 2023, subsequently added Sections 103/238 of the Bharatiya Nyaya Sanhita, 2023.

The investigating agency advanced a prayer before the learned Additional Chief Judicial Magistrate, Baruipur, South-24-Parganas for conducting the post mortem examination in presence of a Judicial Magistrate at Mominpur Police Morgue Hospital on 6<sup>th</sup> October, 2024 which was turned down by the learned Magistrate by its order dated 5<sup>th</sup> October, 2024.

There was a prayer also by the father of the deceased wherein he requested that necessary arrangements be made for post mortem examination before a hospital supervised and controlled by the Central Government.

Learned Advocate General appeared on behalf of the State along with the learned Public Prosecutor.

The Union of India is represented by Mr. Trivedi, learned D.S.G.I.

Mr. Bhattacharyya, learned advocate represents the opposite party no.2/father of the deceased.

Mr. Ahmed, learned advocate represents the family member of

the deceased.

The learned Advocate General submitted that the State has infrastructure, but in order to respect, honour and instil confidence, prayer of the opposite party no.2 for conducting the post mortem at a Central Government Hospital has been accepted by the State and as such, the prayer in the present revisional application has been amended from that which was advanced before the learned Additional Chief Judicial Magistrate, Baruipur and State has come up before this Court so that in presence of a Judicial Magistrate in a Central Government Hospital, the post mortem examination of the deceased can be conducted.

Mr. Bhattacharyya, learned advocate appearing for the opposite party no.2/father of the deceased has relied upon two unreported judgments of this Hon'ble Court which are as follows:

- (i) Smt. Amrita Pandey -Vs. - The Union of India & Ors. [WPA (P) 209 of 2022];
- (ii) Prasenjit Bhunia -Vs. - The State of West Bengal & Ors. [WPA 10909 of 2023].

Relying upon the aforesaid judgments, Mr. Bhattacharyya insists that the post mortem examination be held at the Command Hospital, Kolkata.

Mr. Trivedi, learned DSGI, appearing for the Union of India sought assistance from the Major of the Command Hospital who expressed that they have limitations in conducting such post mortem examination because of various reasons.

Accordingly this Court thought it fit and proper to seek

instructions as to whether any facility is available at AIIMS, Kalyani.

Mr. Trivedi took initiative and Dr. Ajoy Mallick, Medical Superintendent, AIIMS, Kalyani immediately joined virtually and gave his consent. Although, he said that there is limited infrastructure they would require assistance and infrastructure of a hospital for conducting such post mortem examination. So far as the Medical Experts are concerned, such Medical Experts are available with AIIMS, Kalyani.

In course of hearing, this Court perused the Case Diary and the materials which were produced by the State before this Court, particularly the inquest report. This Court, prima facie, is of the opinion, that at the initial stage of investigation prior to the post mortem examination having been conducted, the inquest report suggest acts of sexual offences being committed upon the person of the deceased, so appropriate provisions of law under relevant statutes should have been incorporated by the investigating agency.

Accordingly, this Court directs that henceforth the accused be produced before the Special Court under the POCSO Act, Baruipur for further directions to be obtained in course of investigation.

So far as the post mortem examination is concerned this Court is inclined to pass the following directions:

- 1) The person of the deceased be escorted by the police authorities with proper documentation including the guidelines laid down by Swasthya Bhawan/Medical Council of West Bengal and be handed over by 11.45 A.M. on 7<sup>th</sup> October, 2024 to Dr. Ajoy Mallick, Medical Superintendent of AIIMS, Kalyani.
- 2) If the infrastructure is available, the post mortem examination

will be conducted at AIIMS, Kalyani. In case there is some deficiency in the infrastructure, the Superintendent of JNM, Kalyani would be communicated immediately. The District Magistrate will also communicate to the Superintendent of JNM, Kalyani so that arrangements are made after a request is advanced from AIIMS, Kalyani to provide all assistance for conducting the post mortem examination only by the doctors of AIIMS, Kalyani by using the infrastructure of JNM, Kalyani. I direct that no complaint should be received from the doctors who would be conducting the post mortem examination, if required at JNM, Kalyani.

- 3) Appropriate police arrangements be made while the dead body is being shifted from Mominpur Police Morgue to AIIMS, Kalyani or JNM, Kalyani. To that effect, the police authorities of the State will take adequate measures.
- 4) If a request is advanced by the father and the mother of the deceased for observing the proceedings virtually when the post mortem examination is being conducted, in that case the investigating officer would make an arrangement outside the room where the post mortem examination is being conducted. If the parents are not at all interested, they may be provided a place which is segregated outside the room where they will feel comfortable and this Court requests the doctor, conducting the post mortem examination of AIIMS, Kalyani, that after completion of post mortem examination they would inform/interact with the parents of the deceased.

5) The learned Additional Chief Judicial Magistrate, Baruipur is directed to make himself available at 11.45 A.M. on 7<sup>th</sup> October, 2024. The investigating officer of the case will communicate this order in course of the day to the learned Additional Chief Judicial Magistrate, Baruipur and arrangements be also made so that the learned Magistrate reaches AIIMS, Kalyani and communicate with the Medical Superintendent of AIIMS, Kalyani. The learned Magistrate should be physically present when the post mortem examination is being conducted.

Needless to state that in ordinary course of events, the Magistrate although cannot interfere with an investigation, she/he is empowered to monitor the investigation.

The spirit of BNSS also reflects the same and as such, the Magistrate in course of investigation conducts T.I. Parade, records statements under Section 183 of BNSS (confessional statement or statement of witnesses) as also under Section 349 of the BNSS supervises specimen signature, hand writing samples being obtained by the investigating officer and the added provisions in the new Sanhita, i.e. the finger print as well as the voice samples.

The learned Magistrate is aware about his responsibilities as a monitoring authority which is akin to his functions as stated above. A Magistrate in the rank of Additional Chief Judicial Magistrate has already exercised his authority at least when specimen signatures are taken or hand writing samples of an accused or a complainant is obtained. The same role would be exercised by the Magistrate as a monitoring authority when the post mortem examination is being

conducted.

List the revisional application before this Court under the heading “To Be Mentioned” on 8<sup>th</sup> October, 2024 for submission of compliance report.

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

[Tirthankar Ghosh, J]