

06.11.2024
Item No.5
gd/ssd

MAT/2026/2024
STATE OF WEST BENGAL AND ORS.
VS
REBEKA KHATUN MOLLA ALIAS REBEKA MOLLA
AND ORS.
IA NO: CAN/1/2024

Mr. Kishore Datta, Id. Advocate General,
Mr. Amitesh Banerjee,
Mr. Debangshu Dinda
..for the Appellants.

Mr. Subir Sanyal,
Mr. Arijit Bakshi,
Mr. Sourojit Mukherjee
..for the Respondent Nos.1 and 2.

Mr. Dhiraj Trivedi, Id. DSGI,
Mr. Arijit Majumdar
..for the Union of India.

Mr. Amajit De
..for CBI.

1. This intra court appeal by the State of West Bengal and Others is directed against the order dated 08.10.2024 in WPA 24170 of 2024.

2. The said writ petition was filed by the respondents herein with various prayers. The first of which is to issue a Writ of Mandamus to produce the writ petitioners before independent medical authority as deemed fit by this court; to issue a Writ of Mandamus to pay compensation; to direct the CCTV footages to be preserved; to direct the investigation to be done by an independent agency like a Central Investigating Agency and for other prayers incidental and ancillary thereto.

3. The learned Single Bench after hearing the learned counsel for the parties, which we are informed took place for nearly five days, has directed the case to be investigated by the Central Bureau of Investigation and appropriate directions have been issued and the matter has been directed to be listed on 18th November, 2024 under the heading “To Be Mentioned” to examine the progress of the matter.

4. The State is aggrieved by such direction and the present appeal has been filed.

5. The allegation in the writ petition is custodial torture and injuries being afflicted to the writ petitioner while she was in police custody.

6. The learned Advocate General would vehemently contend that there is no finding recorded by the learned Single Bench that the State Investigation which has already commenced by constituting a Special Team of two officers in the rank of Deputy Superintendent of Police to be not impartial. Further, it is submitted that unless and until reasons are recorded, the matter cannot be transferred to the CBI for investigation and in support of such contention reliance was placed on the decision of the Hon'ble Supreme Court dated 24th September, 2024 in Special Leave Petition (C) No.9628 of 2024 in the case of State of West Bengal v. Jashimuddin Mondal and Others. The learned Advocate General referred to paragraphs 5

to 7 of the said judgment and submitted that unless and until there is a finding recorded by the learned Single Bench that the investigation done by the State Authorities would not give the desired result, the question of transferring the investigation to the Central Bureau of Investigation would not arise, more particularly affidavits were not called for and the State had no opportunity to put forth their submissions in writing. In this regard, the learned Advocate General referred to the various averments in paragraph 5, paragraph 7 of the writ petition and submitted that this will not constitute sufficient grounds for the matter to be referred to the CBI for investigation. Reliance was also placed on the decision of the Hon'ble Supreme Court in Rajender Singh Pathania and Others v. State (NCT of Delhi) and Others reported in (2011) 13 SCC 329 and paragraphs 13 and 14 of the judgment were referred to support the contention that before the court can direct CBI to hold investigation, it should be satisfied that the opposite parties are very powerful and influential persons or the State Authorities like top police officials are involved and the investigation has not been proceeded with a proper direction or it had been biased and in such an eventuality, in order to do complete justice, a direction to CBI to investigate the case can be issued. It is submitted that the allegation made in the writ petition is against a lady police officer

who was impleaded as the 6th respondent in the writ petition and she is the 4th respondent in this appeal and there is nothing to state that she is an influential woman warranting the matter to be investigated by CBI.

7. The learned Advocate General also elaborately referred to the various medical records which form part of the writ petition as also the reports recorded by the Diamond Harbour Government Medical College and Hospital and would submit that there is nothing to indicate that custodial torture was meted out to the writ petitioner warranting interference by the learned Single Bench for transferring the investigation to the CBI.

8. The learned Advocate appearing for the writ petitioners submitted various factual details concerning the arrest of the writ petitioners, their remand to judicial custody and the period during which the writ petitioners were in police custody and also with regard to the findings recorded by the medical officer of the Diamond Harbour Sub-Correctional Home and submitted that there is a clear discrepancy between the recording made by the medical officer of the Sub-Correctional Home with that of the recording made by the medical officer in the Diamond Harbour Government Medical College and Hospital. Further, it is submitted that the writ petitioner was not named in

the FIR and there was no allegation made in the written complaint that offence under the POCSO Act has been committed and including an offence under the POCSO Act is a overzealous attempt of the respondent police. Furthermore, it is submitted that even before the learned trial court where the writ petitioner sought for bail, she was not rendered justice since though the learned special court had recorded adequate reason to reject the prayer made by the investigating officer for 10 days police custody, surprisingly rejected the application for grant of bail. In support of his contention the learned advocate referred to the decision of the Hon'ble Supreme Court in Sube Singh v. State of Haryana and Others reported in (2006) 3 SCC 178 and in particular referred to paragraph 49(f) of the said judgment.

9. After we have elaborately heard the learned Advocate General for the appellant State and the learned Advocate appearing for the writ petitioners, we find that the order and direction issued by the learned Single Bench is just and proper and does not call for any interference. We support such conclusion with the following reasons:

10. The first and most startling fact which has greatly disturbed our mind is the discrepancy in the recording of the medical condition of the writ petitioners by two different authorities. It is not in

dispute that the writ petitioners were arrested by the concerned police on 7th September, 2024. The writ petitioners continued to remain in police custody of the Falta Police Station. On 8th September, 2024 the writ petitioners were produced before the Additional Chief Judicial Magistrate (ACJM) and it is submitted by the learned advocate for the petitioners that the investigating officer sought for police custody. However, the learned ACJM on noting that offence under the POCSO Act was registered in the FIR held that the court does not have jurisdiction and the matter has to be heard by the learned District Judge/Special Judge. Accordingly, the matter went before the learned Special Judge and the learned Special Judge had directed judicial custody of the writ petitioners/accused. It is at this juncture we have to take note of the health condition of the writ petitioners as could be seen from the records/recording of the medical officer of the Diamond Harbour Sub-Correctional Home and that of the medical officer of the Diamond Harbour Medical College and Hospital, South 24-Parganas. In no uncertain terms the medical officer of the Diamond Harbour Sub-Correctional Home has recorded that the writ petitioners have Hematoma in both the legs and back and she complained of pain in the temporal region. This recording cannot be disputed by the appellants as it is evidently clear from the

documents annexed to the supplementary affidavit filed by the appellants in this appeal. Shockingly, when the writ petitioners are produced before the medical officer of the Diamond Harbour Medical College and Hospital, South 24-Parganas, the said medical officer records that there is no history of any external injury. This recording is sufficient to show that there is clear inconsistency between the recordings made by both the medical officers. However, the medical officer of the Diamond Harbour Sub-Correctional Home has been consistent and has recorded that the writ petitioners have been complaining of pain in the legs. For the first time the medical officer of the Diamond Harbour Medical College and Hospital, New Town has recorded on 23rd September, 2024 that there is history of trauma to both the thighs on 07.09.2023 and complaint of pain and after recording so several medicines have been prescribed. Once again the same recording is found in the OPD patient card where the writ petitioners have been advised to have x-ray of the left thigh, x-ray of the left leg and certain medicines have been prescribed and she has been referred to the Ortho Department. On 27.09.2024 the medical officer of the Diamond Harbour Sub-Correctional Home records complaint of pain in the right thigh and has also recorded that the writ petitioners/patient is under treatment of DIHSCH, SOPD (Department of Surgery). On 28th September,

2024 the medical officer of the Diamond Harbour Medical College and Hospital records complaint of pain in lower limbs.

11. Thus, it is prima facie clear that the trauma has occurred to the writ petitioners on 07.09.2024 while the writ petitioners were in police custody.

12. Furthermore, what disturbed us is when the Special Court passed the order dated 12.09.2024 in Order No.4 the following finding has been recorded:

“I’ve gone through the entire materials on record as well as the instant application for further 10 days police remand of the accused persons filed by the investigating officer and case diary and find that during 3 days of police remand of the accused persons mobile phones, pendrives and other articles have already been seized by IO. I also find that both the accused persons have not been named in FIR and there is no any direct allegation against them to commit the allege offence save and except their presence. Search and seizure i.e. mobile phones, pendrive, microphone etc have already been seized during PC remand of the accused persons.

The primary purpose of police custody during an investigation is to facilitate the collection of evidence and information related to a crime and the investigating officer has already seized mobile phones, pendrive, microphone etc. So, at this stage, I do not find any specific purpose of the investigating officer for taking the accused persons on police remand and the investigating officer has shown general reasons i.e. to arrest the other co-accused persons, fixation of PO and verification of statement. **Accordingly, the instant application filed by the investigating officer for 10 days PC remand of the accused persons is considered and rejected.”**

13. Thus, from the above finding recorded by the Special Court it is seen that the accused persons have

not been named in the FIR and there is no direct allegation against them to commit the alleged offence save and except their presence. This finding has been un-assailed and remained as such.

14. Apart from that, the Special Court has also found that the mobile phones, pendrive, microphone etc. have been seized and has recorded its satisfaction as to why the investigating officer's prayer for police custody cannot be granted and the same was rejected. A person of normal prudence would expect that in the paragraphs that are to follow in the order passed by the Special Court the court will naturally have a tendency to grant bail but surprisingly the bail application was rejected. We do not wish to make any further comments on the same being a judicial order but none-the-less the same is to be taken note of. The Special Court has passed another order on 19th September, 2024 in Order No.6. In the said order in more than one place the Special Court has directed the Superintendent of Diamond Harbour Correctional Home to provide all necessary medical treatment to the accused persons.

15. The learned Advocate for the petitioners would submit that despite several oral plea made by the writ petitioners before the medical officer of the Diamond Harbour Medical College and Hospital for recording the health condition, the same was not

recorded. However, this is a matter which has to be examined at the time of investigation.

16. Thus, the discrepancies which in our, prima facie, view are very serious in nature which would warrant an independent agency to conduct the investigation. With regard to the judgment of the Hon'ble Supreme Court in the case of Jashimuddin Mondal and Others, the Hon'ble Supreme Court had pointed out that no doubt the High Court while exercising its power under Article 226 of the Constitution of India, is empowered to entrust the investigation to the CBI. However, for doing so, it has to come to a reasoning as to why it finds that the investigation by the State Police is not fair or is partisan.

17. We have to examine the order passed by the learned Single Bench and to ascertain as to whether at all any reasons have been recorded. The learned Single Bench has noted the submissions made by the learned Advocate General on behalf of the State from paragraphs 10 to 15, after which the learned Single Bench has referred to the decision of the Hon'ble Supreme Court in State of Gujarat v. Mohanlal Jitamalji Porwal and Anr. reported in (1987) 2 SCC 364 and Arnesh Kumar v. State of Bihar reported in (2014) 8 SCC 273 and after noting the directions issued by the Hon'ble Supreme Court examined the facts of the case

and in paragraph 20 the learned Single Bench has recorded that upon reviewing the medical report submitted by the Superintendent of the Diamond Harbour Sub-Correctional Home, South 24-Parganas, it is evident that Ms. Rama Das was subjected to physical torture while in police custody. Further, it has been recorded that this development suggests a potential link between the alleged torture of Ms. Rama Das and her subsequent medical condition. After which the learned Single Bench has referred to the celebrated decision of the Hon'ble Supreme Court in D.K. Basu and also the decision in Sube Singh and then has recorded a finding that given these developments, the court directs CBI to conduct a thorough investigation into the incidents. Furthermore, the learned Single Bench has recorded its satisfaction that the decision to transfer the matter to the CBI is based on the need for an impartial and independent enquiry into the serious allegations of custodial torture. Further, it has been recorded that given the involvement of police authorities, an investigation by the local law enforcement might present a conflict of interest and CBI being an independent Central Agency is directed to conduct a thorough investigation into the incidents that occurred during the aforementioned period of the writ petitioners' police custody. The CBI would direct to identify the police officers involved and undertake

appropriate legal proceedings against those responsible of such act in accordance with law. With regard to the prayer for compensation, the same has been left open and affidavits have been directed to be exchanged and the investigating officer of the CBI was directed to file a report before the learned Single Bench positively by November 15, 2024 and the matter was directed to be listed on November 18, 2024 at 2 p.m. under the heading "To Be Mentioned".

18. The above has been pointed out to show that the learned Single Bench has recorded satisfaction and we do not accept the submission made on behalf of the appellant/State that no finding has been recorded by the learned Single Bench. One more aspect which we need to reiterate at this juncture is the finding recorded by the Special Court that the writ petitioners have not been named in the FIR and there is no direct allegation against them to commit the alleged offence. This finding which has remained un-assailed till now is sufficient to demolish the case of the prosecution, more particularly the inclusion of the alleged offence under the POCSO Act. The written complaint which is in vernacular also does not make any such allegation of an offence under the POCSO Act being committed which leads us to prima facie accept the submission made on behalf of the writ petitioners that inclusion of an alleged offence under the POCSO Act is an

overzealous attempt of the respondent police. One more aspect which needs to be addressed is that influential people are not involved and the allegation is against a lady police officer in a particular police station. This submission made by the appellants/State does not appeal to us since the main person who was arrested namely one Krishna Majhi has already been enlarged on bail. The allegation is that there was a comment made against the minor daughter of a very important person in the State of West Bengal. There is no allegation that the writ petitioners had made any comments and this is clear from the finding recorded by the learned Special Court in its order dated 12th September, 2024 in Order No.4. If that be so, is it a case where the writ petitioners should have been arrested by the police at all. As the Special Court itself has clearly recorded a finding that there is no direct allegation against the writ petitioners to commit the alleged offence save and except their presence. Ultimately, the incident relates to the RG Kar incident which is still under investigation and the matter is also dealt with by the Hon'ble Supreme Court.

19. Thus, we find that the order and direction issued by the learned Single Bench for conducting an independent investigation cannot be faulted and does not call for any interference.

20. Accordingly, the appeal fails and is dismissed and the directions issued by the learned Single Bench shall be complied with by the CBI not later than 5 p.m. of 15th November, 2024.

21. Given all these circumstances, we wonder as to why the writ petitioners should not have been in judicial custody until 5th October, 2024 as commented by us earlier. Reading of the order passed by the Special Court dated 12th September, 2024 will lead to the normal conclusion that bail would be granted but, however, finding in the last paragraph of such order rejecting the bail is clearly contrary and in contra distinction to the findings recorded by the learned Special Court in the preceding paragraphs.

22. It is made clear that the observations against the said order of the learned Special Judge are only prima facie observations to support our conclusion that the learned Single Bench was justified in ordering CBI to investigate the matter and this should not be mistaken or taken to be any comment made by this court against the learned Judicial Officer who was holding the office of the learned Special Court.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)