

22. 04.04.2022
Ct. No.13
Tanmoy

W.P.A. 5418 of 2022

**Purnima Kandu & Anr.
-Versus-
The State of West Bengal & Ors.**

Mr. Koustav Bagchi, Adv.,
Mr. Debayan Ghosh, Adv.,
Ms. Priti Kar, Adv.

...for the petitioners.

Mr. S.N. Mookherjee, Ld. A.G.,
Mr. Samrat Sen, Ld. A.A.A.G.,
Mr. Anirban Ray, Ld. G.P.,
Mr. T.M. Siddiqui, Adv.,
Mr. Debasish Ghosh, Adv.,
Mr. Nilotpal Chatterjee, Adv.

...for the State.

Mr. Y.J. Dastoor, Ld. A.S.G.I.,
Mr. Billwadal Bhattacharyya, Ld. Assistant S.G.I.,
Mr. Phiroze Edulji, Adv.,
Mr. Samrat Goswami, Adv.

...for the CBI.

A second report is received from the Superintendent of Police. Details of further steps taken since 1st of April, 2022 have been set out in the report. The Case Diary is also produced today.

It appears that there is some progress in the investigation. It transpires from the Case Diary and the report, that as on date, four persons have been arrested. One Kolebar Singh is stated to have been arrested in Jharkhand. He was the person accused of having fired the weapon at the victim. The principal accused Dipak

Kandu, the cousin brother of the deceased, has been arrested. Two other accused, Md. Asik and Bhim Tewari have also been arrested. Four persons on the complaint named by the petitioner no.1 have given statements under Section 161 of the Code of Criminal Procedure, 1973.

The investigation is progressing. It cannot be said, as of now, that the investigation at the hands of the State has been slow. However there are some aspects in the investigation that have, however, stuck out to this Court as noticeable.

Kolebar Singh is stated to have been arrested in Jharkhand. The transit remand of the persons from the appropriate Court in Jharkhand appears to have been omitted in the Case Diary. He is, however, in Police custody, remanded by the appropriate Court in Purulia. The photographing of the site of occurrence has been done two days after the incident i.e. on 15th of March, 2022. It appears to this Court that the same may have been done after the intervention of the C.I.D., West Bengal.

It also appears that the person who is stated by the complainant to have facilitated the crime, i.e., the Inspector-in-Charge of the Jhalda Police Station, Sanjib Ghosh, has not been taken into custody as yet, and is still performing his duties.

It is surprising to note that the mobile phone of the said Sanjib Ghosh has not been seized till date. Vital data may have been lost.

There is no dispute as to the principal motive behind the killing. The political rivalry between the deceased and the said Dipak Kandu was commonly known. Dipak had contested on the ruling political party ticket against the deceased, who was an INC candidate, and had lost to the latter. The two political parties had won five seats each and two other seats were won by independent candidates. The death of the Tapan Kandu would have clearly tilted the balance of the control of power of the Jhalda Municipality Board, in favour of the Ruling Party.

It may not be out of place to refer to two additional facts brought to this Court's notice by the petitioner. The first being that in the complaint dated 14th March, 2022, the writ petitioner no.1 had, in one amongst certain other documents, alleged the role played by the Inspector-in-Charge, Sanjib Ghosh, in trying to woo over the deceased to the rival political party. It is stated that he had acted on somebody else's behalf. It is also stated that not only were requests made, but at times, there were threats issued. The petitioners claimed to have audio recordings of such threats, demands or requests from the said Inspector-in-Charge.

The learned Advocate General has, however, said that some audio recordings are in the custody of the Investigating Officer.

The second noticeable fact is that the Superintendent of Police of Purulia District Mr. S. Selvamurugan, is stated to have held a Press Conference yesterday, straightway giving the clean chit to the Inspector-in-Charge, Sanjib Ghosh. This has been done even while the investigation is still in progress, and final report is yet to be submitted. It is also submitted that the said Superintendent of Police has been summoned and is under investigation in connection with another investigation of the Enforcement Directorate commonly referred to as the 'Coal Scam'.

The investigation has progressed, albeit with glitches. Much more evidence relevant and of substance, could have been collected by this time.

Learned Counsel for the petitioners has placed reliance upon the following decisions of the Hon'ble Supreme Court, the relevant paragraphs of which have been laid out below. Reliance was firstly, placed on the case of **Mithilesh Kumar Singh -Vs.- State of Rajasthan & Ors**, report in **(2015) 9 SCC 795**;

"12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an

order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.

13. Having said that we need to remind ourselves that this Court has, in several diverse situations, exercised the power of transfer. In *Inder Singh v. State of Punjab* [(1994) 6 SCC 275 : 1994 SCC (Cri) 1653] this Court transferred the investigation to CBI even when the investigation was being monitored by senior officers of the State Police. So also in *R.S. Sodhi v. State of U.P.* [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248] investigation was transferred even when the State Police was doing the needful under the supervision of an officer of the rank of an Inspector General of Police and the State Government had appointed a one-member Commission of Inquiry headed by a sitting Judge of the High Court to enquire into the matter. This Court held that however faithfully the police may carry out the investigation the same will lack credibility since the allegations against the police force involved in the encounter resulting in the killing of several persons were very serious. The transfer to CBI, observed this Court, “would give reassurance to all those concerned including the relatives of the deceased that an independent agency was looking into the matter”.

(emphasis supplied)

Reliance has also been placed on the case of **R.S. Sodhi, Advocate -Vs.- State of U.P. & Ors.**, reported in **1994 Supp (1) SCC 143**;

“2. We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the so-called encounters. Whether the loss of lives was on account of a genuine or a fake encounter is a matter which has to be inquired into and investigated closely. We, however, refrain from making any observation in that behalf; we should, therefore, not be understood even remotely to be expressing any view thereon one way or the other. We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order.”

(emphasis supplied)

Another case that was cited by the petitioners is **Pooja Pal -Vs.- Union of India & Ors.**, reported in **(2016) 3 SCC 135**.

“**83.** A “speedy trial”, albeit the essence of the fundamental right to life entrenched in Article 21 of the Constitution of India has a companion in concept in “fair trial”, both being inalienable constituents of an adjudicative process, to

culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the State Police notwithstanding, has to be essentially invoked if the statutory agency already in charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

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85. As succinctly summarised by this Court in Committee for Protection of Democratic Right [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] , the extraordinary power of the constitutional courts in directing CBI to conduct investigation in a case must be exercised sparingly, cautiously and in exceptional situations, when it is necessary to provide credibility and instil confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. In our comprehension, each of the determinants is consummate and independent by itself to justify the exercise of such power and is not interdependent on each other.

86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of

scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.”
(emphasis supplied)

A large number of other decisions were also proposed to be placed, but those are not as relevant, considering the above decisions. The principal reasons that should weigh with the Court for transferring of investigation from the State Agencies to that of an independent one is to ensure a free, fair and transparent investigation.

Considering the *dicta* laid down in the aforesaid decisions referred to by the petitioners, there is need for instilling faith of the public at large in any investigation, relating to the crime of this nature. The public at large, need to see that the Rule of Law is still prevalent, given the gravity and politically sensitive nature of the crime. Justice must be seen to be done. Satisfaction of the *de facto* complainant, petitioners' family members and persons associated with them also needs to be addressed.

The State Investigating Agencies appear to have done quick work but there are some omissions in the investigation as pointed out hereinabove.

The proposed transfer of the investigation to the Central Bureau of Investigation (CBI) is, necessary in view of the *dicta* of the Hon'ble Supreme Court laid down in **R.S. Sodhi, Advocate (supra)** case, that it must be clearly evident and apparent to the common public at large that there is indeed honest, transparent and just investigation into the crime in question. The investigation being conducted by the State Police, where the Prosecution would also rest in the State as such, in a case where the principal accused are, a member of the ruling party and an officer of the State Police, may not send a proper message as regards about the investigation.

For *inter alia* reasons stated hereinabove, this Court is inclined to direct the CBI to immediately take over the entire investigation into the instant case. The Jhalda Police and particularly, the Superintendent of Police, Purulia, shall ensure that the entire Case Records and Diary and evidence and every other material in the hands of the State Police is transferred and made over to the CBI.

This Court records appreciation for the fair and just stand taken by the learned Advocate General and his team in the matter in placing all facts and documents relevant for the decision of this case.

It is expected that the investigation shall be carried out expeditiously, and final report is submitted to the jurisdictional Magistrate, within a period of forty-five days from date.

Liberty is reserved to CBI to apply for extension of time. Reports of the Superintendent of Police, Purulia, are taken on record. The Case Diary, however, is returned to the State.

The writ petition being W.P.A. 5418 of 2022 is disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Rajasekhar Mantha, J.)