

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 27799 of 2022

CAN 1 of 2023

CAN 2 of 2023

Central Bureau of Investigation
Versus
The State of West Bengal & Ors.

For the CBI

: Mr. D.P. Singh, Ld. Special Counsel, CBI
Mr. S.K. Kantiwal
Mr. Manu Mishra
Mr. Samrat Goswami
Ms. Shreya Dutt
Ms. Suprita Sankhel

.....Advocates

For the State

: Mr. Anirban Ray, Ld. Government Pleader
Mr. S.G. Mukherjee, Ld. Public Prosecutor
Mr. Rudradipta Nandi
Mr. Debhasish Ghosh
Mr. Debraj Sahu
Mr. Arka Nag
Ms. Munmun Ganguly

.....Advocates

For the added respondent : Mr. Subir Ganguly

Mr. Fazrul Haque

.....Advocates

Heard lastly on : 05.04.2023

Judgment on : 01.05.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India, inter alia, praying for direction for transfer of investigation in Rampurhat Police Station Case No. 612 of 2022 dated 13.12.2022 under Sections 448, 323, 325, 302, 385, 386, 504, 427, 120B of the Penal Code from the present Investigating Agency to the Central Bureau of Investigation or to any other independent agency.

2. Mr. Singh, learned senior counsel representing the petitioner, submitted as follows.

2.1 The dynamics at play in the State of West Bengal and overall hostile conduct of respondent no. 1 and the State towards investigation of cases by the petitioner herein was required to be understood. These background facts were essential to adjudicate the need for transfer of investigation. The catastrophic Bogtui Carnage Case was a result of political rivalry. This Court took suo motu action to ensure a fair investigation. When the external and political factors influencing the investigation at hand came to light, including suspicions regarding role of officers of the State/respondent no. 1 themselves, this Court, vide Order dated 25.03.2022 in WPA (P) 130 of 2022, was pleased to direct transfer of investigation from respondent no. 1 to the CBI.

2.2 During the course of investigation of the Bogtui Carnage Case, the petitioner arrested 16 of accused persons and filed a charge sheet/final report and a supplementary charge sheet against 26 in all. In the further investigations, Lalan Sk., earlier absconding, was arrested. His other family in the area, and a number of police officers/officials of PS Rampurhat, were also linked to the present case (RC0562022S0006) and a cross case (RC0562022S0006), who were suspects and/or their complicities were likely to emerge in these two cases. Unfortunately, Lalan Sk. committed suicide on 12.12.2022 while he was in CBI custody after his visit to his village in Bogtui where his house was situated. Therefore, a fair investigation was required into his reasons for suicide. However, from the series of suspicious events starting from the inquest proceedings to the registration of the case, it seemed that the Government machinery and people responsible for the Bogtui Massacre saw it as an opportunity to discredit the petitioner. After the suicide, the petitioner duly complied with the procedure and protocol and reported the death of the accused to the State. However, it later came to know that an FIR No. 612 of 2022 under Sections 448, 323, 325, 302, 385, 386, 509, 427, 120(B) was registered against officers of the petitioner allegedly on the complaint of the wife of Late Lalan Sk. i.e., the respondent no. 2.

2.3 The petitioner was informed of the death of Lalan Sk. at around 04:30 p.m. on 12.02.2022, and the information was given to the police around 4:57 p.m. on the same day. Subsequently, the senior officers of the petitioner also spoke to the senior officers of respondent no. 1. The Sub-

Inspector, Rampurhat PS of respondent no. 1 and the Executive Magistrate came to the spot at 09:30 p.m. on 12.12.2022 for conducting inquest. However, no inquest was conducted at the spot. Since there was extensive videography of the same, a lame excuse had been given only by way of an affidavit of the respondent no. 1 saying that there was no light and no one to identify the body. Inquest was conducted on the next day i.e., on 13.12.2022 at 13:40 hours wherein it had been recorded by the Executive Magistrate that he was informed about the death of Lalan Sk. at 08:49 a.m. on 13.12.2022. No note about the visit on the previous day had been recorded. The inquest reports of the Magistrate and the Sub-Inspector were part of the record. It was recorded that there were no visible signs of any injury except post-mortem staining even on the dependent areas of the body i.e., sole of feet, legs, abdominal region. The post-mortem was conducted on the next date after the inquest, which was also suspicious and clearly showed that it was done under influence of the Government machinery.

2.4 The controversy around malafide registration of FIR could be described as under :

- a) Although respondent no. 2, Reshma Bibi came to know of the death of Lalan Sk. in the evening itself on 12.12.2022, yet the FIR was registered at 04:25 a.m. on 13.12.2022.
- b) On the asking of this Court, the respondent no. 2 could not tell who the scribe of the FIR was.
- c) The respondent no. 2 also could not explain why such an odd time was chosen to register the FIR.

d) During the course of hearing, pleadings by respondent no. 1 showed that respondent no. 2 was admitted to the hospital on 13.12.2022 at 03:44 a.m. purportedly for a simple injury on the shin. When this point was raised before this Court, the respondent no. 1 made every effort to show by different means that her admission in the hospital was done at 05:44 a.m. on 13.12.2022. There was clearly an overwriting of records to support the false version of the registration of the malicious FIR.

e) The records also showed that respondent no. 2 remained admitted in hospital till about 04:30 p.m. on 13.12.2022. Either which way, in such scenario, the respondent no. 2 being a witness to the inquest and to the post-mortem report became suspicious.

f) There were overwritings on the front page of the FIR and there was no mention of the UD case, which stood registered prior to the FIR. This was an contravention of the applicable Bengal Police Regulations, 1943.

g) The pleadings of respondent no. 1 also showed that they could not verify and authenticate the signatures of respondent no. 2 on the FIR in question.

h) The tone and tenor of the FIR, the fluency of the FIR and the manner in which the FIR was written, clearly showed that the rustic and uneducated complainant could not have dictated or stated the contents of it. The naming of unrelated officers of the petitioner and casting a wider ring by including its SPs and DIGs in a blanket manner showed that someone from the State Government was at play.

i) Seeking CID i.e., the respondent no. 1 to be the investigating agency and that being granted on the same day also showed the interestedness of the State Government and Police Officers.

j) Despite the FIR being registered before the initiation of inquest and PMR, there was no inquest or PMR done in the FIR in question. Since the inquest and PMR continued to be done under UD Case, and coupled with suspicions as mentioned above, it was clear that the FIR had in fact been registered after conducting the Post Mortem Report.

k) It was clear that the police had done some nefarious activities which was not unknown, and filled the first page of the FIR without the accompanying or attached complaint. In this way, the ground for the registration of the case was made in the morning while the shape to the FIR and complaint was given subsequently after elaborate discussions with officers of the State machinery as a whole, including the local police and the CID. The fact that no magisterial enquiry was sought by the local police at the earliest nor the copy of the FIR sent to the Magistrate in time also pointed a finger to that fact.

l) The signatures and last paragraph of the complaint allegedly filled by respondent no. 2 clearly showed that the FIR had been registered by the complainant at a belated stage after being asked by the authorities to do the same. The assumptions made in the FIR were hearsay and did not make out any cognizable offence.

2.5 The dead body was removed from the place of occurrence clandestinely with a view to change the true findings. The change of the

place gave the State Police and the respondent no. 1 the following advantages that the Respondent no. 1 could use the opportunity to tamper with the body; it presented as an opportunity to not record the surroundings and conditions in which the body was found and the details of the condition of the body at the spot; and it also gave an opportunity not to have the CRPF officers, who were independent, to be witness to the inquest.

2.6 The Post-Mortem was done after more than 20 hours. In the meantime, between 12.12.2022 and the post-mortem, there were as many as three independent assessment(s) of Lalan Sk. On 12.12.2022, before the death, on an examination by government doctor, no external injuries were found. Even after the death, the inquests by the Executive Magistrate and the Sub-Inspector showed no injuries. The Post-Mortem Report on the contrary, recorded 18 injuries. Although the reason of death was asphyxia due to ante-mortem hanging, the word “violent mechanical asphyxia” was deliberately used. Two independent reports sought by this Court from the S.S.K.M, Hospital, Kolkata and the AIIMS, Delhi showed that the word violent had been loosely used and the cause of death was actually asphyxia due to ante-mortem hanging which could be suicidal in nature. The AIIMS, Delhi had seen that the injury i.e., the ligature mark was dissected, however all other injuries had been merely referred on observation. The AIIMS, Delhi report also did not dwell deeper into it as it was against the settled law and medical practices to determine if the injuries were different from the post-mortem staining without dissecting the same, more specifically since post mortem staining was usually mistaken as injuries. A casual look at the body

on the spot would be sufficient to determine that the cause of result was asphyxia due to hanging and there were no injuries. Interestingly, in the entire State of West Bengal including many accused persons in this case have been in CBI custody and there was not even a solitary instance of custodial torture before such allegations were made in the present case.

2.7 The State of West Bengal and the respondent no. 1, in particular, had taken this unfortunate death as an opportunity to discredit the petitioner and settle scores with the agency, pressurize officers of the petitioner and prevent them from discharging their duties. The family members of the complainant including the complainant and some police officers in the area were suspected to be part of commission of offences in the Bogtui Massacre Case. Complaints in this regard of pressure and threat to life were also being received by the petitioner from the villagers. The respondent no. 2 using the CID Cover, was threatening many witnesses of the case for falsely deposing against the CBI Officers, else they would be falsely implicated in cases of the CID. The location from the telephone records of all the concerned people associated with the case, whether the accused, or investigators or witnesses, would shed light on the authenticity of the allegations made in the FIR. It was reasonably apprehended that the investigation was being done under influence and the recording of the statements were done after various rounds of tutoring and recording. Another FIR bearing no. 614 of 2022, was also registered on the alleged complaint of respondent no. 2 against “unknown miscreants”, after the ‘no-coercive’ direction was granted by this Court on 14.12.2022, to overreach the orders of this Court. One Anubrata

Mondal, a close associate of the Government and local heavyweight of the TMC in the same district, was under arrest and two of the officers who were responsible for his arrest had been specifically named in the FIR in question. The Division Bench of this Court took notice of this fact while rejecting the bail of Anubrata Mondal.

2.8 The complainant, although made statements all over the media, had not filed reply to most of the applications or affidavits in the captioned case. Even when the Court had insisted the complainant to file her reply to the writ petition in the captioned case, such reply was nothing but a plain denial. A stark silence on the complainant's part spoke volumes about the authenticity of the complaint in the present FIR.

2.9 As the complainant could not choose the investigator of her choice, the Court should take into consideration transferring the investigation to the Specialized Central Unit of CBI at the Headquarters of the petitioner under direct supervision of Joint Director/Additional Director, CBI or form a Special Investigation Team comprising of officers outside the State of West Bengal. The Hon'ble Courts had time and again exercised such power on various grounds, which include -

- i. Investigation by State police lacked credibility or was mala fide;
- ii. When high ranking State officials and authorities were involved and were likely to influence investigation;
- iii. When investigation was tainted/biased, and where the interest might have national and international ramifications;

iv. Where such an order might be necessary for doing complete justice and forcing the fundamental rights.

2.10 The right to fair trial, forming part of Article 21, included right to fair investigation. If the investigation itself was tainted, the possibility of truth being uncovered was rather bleak. This Court time and again dealt with the issue under what circumstances the investigation could be transferred from the State investigating agency to any other independent investigating agency like CBI. It had been held that the power of transferring such investigation must be in rare and exceptional cases where the Court found it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacked credibility and it was necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. [K.V. Rajendran versus CBCID, (2013) 12 SCC 480]. Thus, it was evident that this Court had transferred the matter to CBI or any special agency only when the Court was satisfied that the accused had been a very powerful and influential person or State authorities like high police officials were involved and the investigation had not been proceeded with in a proper direction or it had been biased. [Disha Versus State of Gujarat, (2011) 13 SCC 337]. The Court held that wherever a charge-sheet had been submitted to the Court, even this Court would not ordinarily reopen the investigation especially by entrusting it to a specialized agency. However, in a proper case, when the Court felt that the investigation by the police had not been in the proper perspective and that in order to do

complete justice, where the facts of the case demand that the investigation be handed over to a specialized agency, a superior Court was not bereft of the authority to do so. [Naresh Kumar Mangla Versus Anita Agarwal, 2020 SCC Online SC 1031]. The superior Courts were vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it was also a settled principle that this power had to be exercised by the superior Courts very sparingly and with great circumspection. What ultimately was the aim or significance of the expression “fair and proper investigation” in criminal jurisprudence? It had a twin purpose: first, the investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis on a fair investigation had to be to bring out the truth of the case before the Court of competent jurisdiction. [Vinay Tyagi Versus Irshad Ali, (2013) 5 SCC 762]. The State agencies had clearly failed to effectively investigate the crime and bring the actual culprits to book. There was thus, an urgent and immediate need to instil public faith in the investigation and trial, which provided sufficient impetus for the change in the investigation agency. This Court’s mind was not free from doubt that the murder in question might have been the result of a rivalry and a conspiracy. The victim might have been obstructing huge monetary and/or political gain that some persons were after. Such persons were politically powerful and well connected. A fair and effective investigation would indeed open a can of worms, or expose any likely role of influential persons. The pressure on the State police and the investigation agencies to shield certain persons and their nefarious actions

could not therefore be ruled out. Change of the investigating and prosecuting agency in the instant case was also necessary to instil faith in the family of the victim and the public at large. [Dharam Pal Versus State of Haryana, (2016) 4 SCC 160; Protima Dutta Versus State of West Bengal, 2022 SCC Online Cal 1459].

2.11 The petitioner already initiated an inquiry into the cause of custodial death and suspended the officers holding charge.

3. Mr. Ray, learned counsel for the State, submitted as follows.

3.1 In accordance with the scheme envisaged under the Constitution of India, more particularly the letter of law laid down in Schedule VII, List II, an investigation of a crime should be conducted by the police of the concerned State. Furthermore, any prayer for transfer of investigation should not be acceded to in a routine manner. Constitutional Courts exercised the power of transfer of investigation in exceptional and/or extraordinary circumstances in order to preserve the sanctity and administration of the criminal justice system. Averments made in the writ petition went on to show that the allegations levelled against the State respondent were without any particulars and solely on the basis of surmises, conjectures and aspersions. Further, it was trite law that an accused could not maintain any proceeding for the transfer of any criminal case or choose its investigating agency. The petitioner admittedly herein had espoused the cause of the accused persons in preferring the instant petition and acted as an agent. The petitioner miserably failed to set out particulars of malice and/or hardships allegedly being faced by the petitioner.

3.2 The petitioner herein had levelled various allegations with respect to the manner and mode of investigation being conducted by the State respondent. It had been alleged that the FIR had been fostered at the behest of the State respondent and in collusion with the respondent no. 2 with an intention to falsely implicate the petitioner and its officers. Unfortunately, most of these allegations had been made with an intention to gain access to the case diary. The petitioner had relied upon an extract of the discharge register of the hospital appearing at page no. 23 of the second supplementary affidavit filed by the petitioner. It appeared that the petitioner herein had undertaken parallel investigation in connection with the FIR. The respondent no. 2 was admitted to the hospital after the registration of the FIR and the Investigating Agency collected enough materials to prove the same. Such materials formed part of the case diary of the Investigating Agency. Further, it was alleged by the petitioner that the State respondent had manipulated the discharge register of the Rampurhat Government Medical College and Hospital to show that the respondent no. 2 was admitted to the said hospital after the registration of the FIR. The Investigating Agency seized the aforesaid register pursuant to the order of this Court. Further the hospital maintained digital records in connection with admission of the patients and the same was reproduced manually on a register as well. Such digital records showed that the respondent no. 2 was indeed admitted to the hospital after the registration of the FIR. The petitioner had alleged the inquest and post-mortem proceedings were not conducted diligently and as per the established norms. Not only were the

aforesaid proceedings videographed, but the report filed by the AIIMS, Delhi on 20th February 2022 with respect to custodial death of the deceased, in pursuance of the direction passed by this Court dispelled all doubts and suspicion revolving around the post-mortem of the deceased. The respondent no. 2 was not found on her bed since 1:00 p.m. The said material formed part of the case diary. Furthermore, the reason as to why the respondent no. 2 was not found at the said hospital was because she was present during the inquest proceedings of the deceased husband with her relatives at the mortuary of the same hospital. Statements of the respondent no. 2 and her relatives evidencing the above stated fact had been recorded, videographed and formed a part of the case diary. Further the entire inquest proceedings and post-mortem of the deceased had been videographed as well.

3.3 The Hon'ble Supreme Court of India in several judgment held that transfer of criminal case was not to be given just for asking. When an investigation be transferred the Hon'ble Supreme Court of India had dealt with the aforesaid issue in the matter of Arnab Ranjan Goswami Vs. Union of India and Ors. reported in (2020) 14 SCC 12 and also in Rhea Chakraborty Vs. State of Bihar and Ors. reported in (2020) 20 SCC 184. The accused could not choose the investigating agency. [Rhea Chakraborty (supra)]. The Court should refrain from interfering or demoralising the investigation. [Director, Central Bureau of Investigation and Others Vs. 'NIYAMAVEDI' represented by its MEMBER, K. Nandini, Advocate and Others reported in (1995) 3 SCC 601]. There was a distinction between the

duty of the Court and an investigating agency [P. Chadambaram Vs. Directorate of Enforcement reported in (2019) 9 SCC 24.] The Hon'ble Supreme Court of India in its judgment clearly defined the segregated role of an investigating agency vis-a-vis that of a judiciary/court. It was not the function of the Court to mandate an investigating agency, as long as the investigation did not violate any provision of investigation. There should be no transfer of any case without mala fides. [State of Haryana and Ors. Vs. Bhajanlal and Others reported in (1992) Supp 1 SCC 335].

3.4 The petitioner had alleged that pending inquest, the registration of FIR was mala fide, the reasons whereof, there should be a transfer of investigation. For such purpose, the State respondent referred to the case of Lalita Kumari Vs. Government of Uttar Pradesh and Others reported in (2014) 2 SCC 1. It was the duty of the police to register the FIR.

3.5 The Constitutional Writ Rules of this Hon'ble Court under Rule 5 clearly provided that the provision of the Code of Civil Procedure, 1973 applied to affirmation of an affidavit and the same had to be on the basis of knowledge and/or records. The allegations made in the writ petition about the mala fide in registration of the FIR had not been affirmed in such fashion. [A.K.K. Namibar Vs. Union of India and another reported in (1969) 3 SCC 86]. The writ petition was only limited to transfer and not quashing. The petitioner was concerned about the inquest not being held properly or not as well as difference between suicidal hanging or homicidal hanging. The petitioner was in requirement of mini trial before this Court. This was not possible since the investigation was still continuing and the

petitioner/accused would always be in a position to take their defence on merits before the trial Court. Further, the writ petition was restricted to transfer of the case and not quashing. Accordingly, the writ petition ought to be dismissed. It might be germane to mention that while the high ranking officers of the CBI had not even been summoned in this case, the other accused officers were avoiding physical interrogation. Incidentally, the CBI and two other accused filed an application under Section 482 of the Code for quashing of the instant proceeding.

4. Mr. Ganguly, learned counsel representing the added respondent submitted as follows.

4.1 The writ petition being W.P.A. No. 27799 of 2022 was not at all maintainable in view of the fact that the persons who had been arraigned as accused in connection with Rampurhat FIR No. 612/2022 dated 13.12.2022 had not filed the said writ application before this Hon'ble Court, inter alia, praying for transfer of investigation of such case to any other independent agency. On the contrary, it was the Central Bureau of Investigation, which by itself is an investigating agency, that had come up before this Court seeking transfer of the aforesaid criminal case to some other independent agency. The instant writ application and the reliefs sought therein were nothing but a desperate attempt on the part of CBI to shield its officers. Physical interrogation was a part and parcel of investigation. Until and unless, the officers of CBI were allowed to be interrogated physically the investigation process might not reach its finality and as such, physical interrogation was badly needed for the sake of proper investigation.

4.2 The de facto complainant had objection to any possible exhumation of the deadbody of the victim for further post mortem examination.

5. I heard the learned counsels for the parties and perused the writ petition, the applications, the affidavits and the written notes of submissions. Perused the copy of the case diary in 5 volumes filed earlier on behalf of the State on 27.04.2022 and 28.04.2022 in my chamber and had it re-sealed.

Copy of the same shall remain with the record in sealed envelopes.

The question of maintainability

6. In the present case, the Central Bureau of Investigation (CBI, for short), a premier Investigating Agency of the country investigating several important cases, has prayed for transfer of investigation of the present case to it or to another independent Investigating Agency on certain grounds. Its prime contention is that the officers of the CBI have been implicated as accused in the instant case of custodial death, out of whom some had nothing to do with the investigation of the case in respect of which the death took place and some were extremely high ranking officials not connected anyway with the day to day investigation of the said case. The CBI is a juristic entity which can surely prefer an application before this Court. It can fairly be aggrieved if it feels that its officers investigating sensitive cases were being needlessly and maliciously dragged into the instant case where they had no role to play. It will be for this Court to see whether such apprehensions are well-founded.

6.1 Had the accused themselves come up with such an application for transfer of investigation, the question of maintainability of such petition would have assumed some significance. After all, the accused cannot choose the agency which would investigate them.

6.2 Interestingly, the concept of locus standi, when it relates to criminal law, is quite volatile. An example is the de-facto doctrine propounded by the Hon'ble Apex Court in respect of lodging FIR or filing complaint. The concept of locus was held to be alien to criminal law [AR Antulay, (1984) 2 SCC 500, Sheonandan Paswan, (1987) 1 SCC 288]. In R Rathinam, (2000) 2 SCC 391, a group of lawyers was permitted to seek cancellation of bail of an accused. In recent times, the concept of locus has been liberally treated even in the writ jurisdiction. On this, reliance may be placed on Nand Kishor Sonkar versus Howrah Municipal Corporation & Ors., (2005) 3 CHN 140 (Cal).

6.3 The present petition is, thus, found quite maintainable, especially vis-a-vis the locus of the CBI to maintain such application.

Mini Trial?

7. There is hardly any reason or scope to conduct mini trial in an application under Article 226 of the Constitution for transfer of investigation. It is in a proceeding which could have the tendency of putting an end to a criminal case like in an application for quashing under Section 482 of the Code or a revisional application challenging an order of framing of charge that the question of whether a mini trial is being conducted or not becomes more relevant. It is trite law that a mini trial cannot be conducted at such stage and one has to leave the trial for the Trial Court to conduct.

7.1 However, if such allegations are levelled, as in the present case, that the investigation is tainted and is being maliciously done to falsely implicate officers or agencies so as to dissuade them from performing their duties in other important and sensitive cases, then it will be incumbent upon this Court to look into the relevant aspects, touch upon relevant issues and even sift materials collected for the limited purpose of finding out whether there is even a semblance of truth in such allegations. If the allegations are found credible, the wrong has to be forthwith remedied. Otherwise, the same would amount to the worst form of travesty of justice.

7.2 It is obvious that in deciding such an application, care has to be taken not to make unnecessary findings of fact that could impact a trial, if any, or to disclose identities of witnesses hitherto unknown or mention the details of evidence collected during investigation.

Prefatory facts

8. On 21.03.2022 a group of miscreants burnt to death at least ten persons in the village Bogtui by setting them on fire. Bombs were hurled. With extreme depravity, men, women and innocent children were put to death. The present petitioner was a prime accused in this case. He was arrested and was in the custody of the CBI at the relevant time, the investigation of the case having been transferred to the CBI earlier by an order of this Court.

8.1 After arrest and even on the date of incident, the present victim Lalan Sk. alias Boro Lalan was purportedly examined by the doctors at the local State hospital and no injuries were found on him, as claimed by the CBI.

The CBI further claimed that when the officers of the CBI were not present in the temporary camp and the camp was being guarded by the CRPF and the CBI personnel, the victim wanted to take a bath and went to bathroom with a towel. The towel was quite long. After sometime the victim was found hanging from the upper portion of the shower with the said towel. Intimation was sent to the police and other authorities. Thereafter, the State authorities removed the deadbody.

Inquest not done promptly and at the spot

9. Although information was sent to the police authorities soon after the incident and the police officials and the learned Executive Magistrate visited the place, they did not conduct the inquest there purportedly on the ground that the light was not sufficient. The body was removed from the spot. The petitioner claimed that this was deliberately done so that the body could be manipulated with injuries, the local witnesses need not be examined and a trumped up version of the case could be foisted.

9.1 It is not uncommon for police or Executive Magistrate not to conduct an inquest on the ground that light is insufficient. Whether the light was actually insufficient and whether the shifting would have had any effect on the preservation of the body is not for this Court to determine. At this stage, these facts, per se, do not seem to cast much doubt on the intent of the investigating agency.

Initiation of the FIR

10. Although the death took place on 12.12.2022 in the afternoon and the same very soon got well publicised, the FIR could be lodged purportedly by

the wife of the victim only on 13.12.2022 at about 4.25 a.m. On this, the petitioner has levelled several allegations. It has come up with a document that apparently showed that the informant was admitted in the State hospital at the relevant time when she was supposedly lodging the FIR at the police station. After such point was taken, the State came up with an explanation that this was a result of mere overwriting in the manual hospital register and the recording in the electronic mode bore out the mistake. The CBI also alleged subsequent filling up of the later portion of the FIR as would be evident from the spacing of the lines. The petitioner vehemently contended that the names of Investigating Officers of other cases and high ranking officials of the CBI like the DIG have been taken at someone's dictation only to corner the petitioner. The scribe of the FIR was also not named. In fact, the de facto complainant stated in Court that she did not know his name.

10.1 If the above facts culminate in a charge-sheet, the same will have to be tested at an appropriate stage. However, at this stage this Court is only concerned about whether the above contentions as alleged are indicative of any deliberate bias or malice in the investigating agency.

10.2 It is very strange indeed that the Investigating Agency, even after the issue regarding mismatch with the hospital records was pointed out on behalf of the CBI in its second supplementary affidavit on 17.02.2023, did not choose to immediately investigate into such aspect. It was only after this Court directed seizure of relevant documents in this regard on 20.02.2023, that the same was done. The contention of the State that electronic record

supported the altered noting in the register is to be assayed on the anvil of whether the former was ordinarily expected to follow the manual register or not.

10.3 It may also appear quite uncanny that much after such well-publicised incident and in the wee hours of the dawn of the next day, the de facto complainant would go to the police station to lodge an FIR and do so without knowing or later remembering the scribe of the FIR. But, these are questions of fact that would perhaps be more relevant in an application for quashing or during trial. In fact, one may even contend that the alleged malice of an informant may not necessarily be equated with that of an investigator.

10.4 However, after a careful perusal of the Case Diary, it can be found that there is more than what meets in the eyes. These were several statements of the informant recorded at different times, besides the FIR. Much after it was contended by the petitioner that the scribe of the FIR was not named and even after the de facto complainant related her ignorance about the name of the scribe in open Court, the present investigator went on to record her further statement regarding the scribe's identity where she gave all the details. If the intention were to bring out the truth, only the scribe would have been examined after identifying him from other sources. Moreover, no reason was forthcoming for recording such subsequent statement of the informant like the informant having approached them again after obtaining information about the scribe or the like. One is then

left to ponder about what could be the reason that prompted her to be re-examined on this issue.

10.5 What is also of concern is that in the body of the FIR there is the specific implication of high ranking officers of the CBI like the DIG and some officers of other sensitive cases on a rather farfetched hearsay account that the victim had overheard the conversation of the local officers with someone influential about extracting confession from him and, in turn, related this to the de facto complainant during their supposedly fleeting meetings while the victim had remained in CBI's custody. Yet, not much investigation has been done in this regard, at least in terms of not just collecting, but also analysing the call records of the concerned individuals namely, the informant, the CBI officers and even the scribe.

10.6 The non-mentioning of the FIR number in the inquest report or the Post-Mortem Report is, however, quite a commonplace error and is at least at this stage not necessarily indicative of any wrongdoing.

Injuries on the victim

11. It will not be prudent to discuss the statements of witnesses from the victim's neighbourhood or of another co-accused about the alleged infliction of assault on the victim. Suffice it to say that such statements are present in the case diary. For deciding the present lis, more emphasis ought to be given to the documentary evidence like the injury reports, the inquest report and the post-mortem report and the like and the manner in which they were dealt with. As the old adage goes, witnesses may lie, but documents and circumstances do not.

11.1 Although the purported immediately preceding reports negated the presence of injury on the victim's person and the inquest reports also did not show external injuries except for the obvious ligature mark and the like, the post-mortem report showed presence of injuries. The petitioner has explained these as injuries received after transportation of the body from the spot and by claiming that these were at best post-mortem staining while the State strongly relied on the post-mortem report. At the risk of repetition, it is reiterated that all these and their ultimate effect need not be evaluated at this stage.

11.2 However, what is unfortunate is that the Investigating Agency, even after transfer of investigation to the DIG, CID, did not examine the doctors who had purportedly certified that the victim was not having any injury before his death.

Post-mortem report

12. At the first glimpse of the post-mortem report what struck this Court was the use of the expression 'violent mechanical asphyxia' present in the opinion of the post-mortem doctor. Ordinarily, such adjectives as 'violent' is not used in the opinion part of a post-mortem report and at best, the post-mortem doctor elaborates about all these during his testimony before the trial Court. Of course, such expression may very well be used even in the opinion part of a post-mortem report when the reason is so very obvious and is supported by attending circumstances like existence of severe corresponding injuries or marks of vital reactions. The purpose of discussing about this issue is not to make a finding of fact, but only to find out whether

there is any probable credence in the petitioner's allegations that the investigation was being done with a view to fix someone. Ideally the investigating officers then should have gone for another opinion. Upon query by this Court, the Investigating Agency sent the post-mortem report for the opinion of a five members Board of the local State Hospital. The said Board made a painstaking effort to support the view of the post-mortem doctor as regards the use of the word 'violent'. It formulated a bizarre logic, which is quoted as follows – "In this case 'hanging' has been caused by an outside mechanical force. So this was a case of mechanical asphyxia and as it has caused death, so definitely it was violent in nature. So the phrase 'violent mechanical' was used." This Court was then constrained to ask the Investigating Agency to send the post-mortem report to the AIMS, New Delhi and to the SSKM, Kolkata for their respective opinions. Medical boards were formed. The said medical boards effectively deleted the word 'violent' from their opinions as to the cause of death. The AIIMS, Delhi held that "The deceased had died due to asphyxia as a result of ante mortem hanging by a ligature, which could be suicidal. Circumstantial evidences are to be considered."

12.1 The other finding in the post-mortem report about the intact ligature mark around the neck producing a 'V' is for the Investigating Agency to take note of.

12.2 It is for the Investigating Agency to arrive at a prima facie satisfaction about the nature of death and then press a charge, if any. The effort of the

Investigating Agency should be to dispassionately collect the best evidence. But, this Court finds dearth of such endeavour.

Non-examination of persons near the camp

13. Apart from the officials of the CBI connected to the temporary camp, there would be the workers of the host organization where the camp is situate. Such witnesses would provide the best evidence of what went on there. They ought to have been examined and not merely for seizure of lathi (stick).

Motive

14. Although it is not necessary to prove motive in every case, it is nevertheless important for the investigating agency to find out the motive behind a crime so as to arrive at the truth. It is of utmost importance to find out as to why was the instant crime committed if it was not for the victim himself to have committed suicide and if at all, who was to gain from this?

14.1 There is hardly any material forthcoming from the investigators in this regard.

Conclusions

15. The quality and direction of the investigation done in the instant case by the present dispensation are not much different from the earlier one. Papers are galore in the case diary like three witnesses for the seizure of a lathi(stick). The case diary is replete with statements made by relatives, acquaintances and neighbours of the victim herein. But, the earnest request of the Court to give the best effort regardless of what might have gone on earlier seems to have gone unheard. The direction of the investigation

remains one-track, thus smacking of an implicit bias. It lacks keenness in collecting the best evidence and is more bent on somehow countering the points that were being taken up by the petitioner and even the fallout of a purported disclosure made before this Court for whatever it was worth.

15.1 Among other things, the following specific infractions of far-reaching consequences are noticed in the investigation done thus far –

(i) Non-examination of the doctor/s purportedly giving fit certificate to the victim immediately before the incident.

(ii) Non-examination of witnesses from the organization hosting the CBI camp, except for a formal purpose.

(iii) Failure to suo motu seize the records of the Hospital showing alleged discrepancy regarding the de facto complainant's admission immediately after the point was raised by the petitioner.

(iv) Failure to explore the reason behind linking the CBI officer of the other case or the DIG, especially given the fact that the Investigating Agency has not reportedly found it necessary even to issue notice to them.

(v) Failure to provide any clue about the motive behind the alleged crime.

(vi) Sitting tight over the arguably flawed 'opinion' in the Post-Mortem Report by the earlier investigator and subsequently, simply accepting a similar report of the first medical Board. Such opinion goes to the root of the matter and may have a determining effect on the whole outcome of investigation.

15.2 A custodial death is one of the most condemnable events in the annals administration of criminal justice. No less heinous would be an attempt to

frame an innocent. The Court also has sympathy for the de facto complainant for she has lost her husband. Therefore, it is the bounden duty of this Court to ensure that a fair and effective investigation is carried out, truth prevails and justice is done to all concerned.

15.3 In view of the above discussions, to instil confidence in all and for securing the ends of justice, this Court is of the considered view that further investigation of the case should be done by a fresh set of investigators.

15.4 The death having taken place in the custody of the CBI cannot be the only reason not to transfer the investigation to them as so many such deaths in the custody of the State Police are investigated by them. But, this is also not a case where investigating officers from other States have to be involved. Among other things, it would cause more delay and logistical hurdles. A joint investigation team including the officers of the State and the CBI was also being contemplated. However, regardless of the CBI's strong conviction about their innocence, it is quite strange the CBI had chosen to be a co-applicant in an application for quashing of proceeding along with some co-accused officers. So, it would also not seem proper to involve them in the further investigation of the instant case at least at this stage. Afterall, justice should not only be done, but should be shown to have been done.

15.5 Therefore, this Court is left with the other efficacious option of directing a Court-monitored investigation by a Special Investigation Team constituted by the police officers of the State. For this, the Court has gone through a list of very eminent officers and arrived at two specific names upon considering their vast experience and expertise.

15.6 Monitoring of investigation is not the same as supervising it. The concern and interest of the Court in such Court monitored cases is that there is no undue delay in the investigation and the investigation is done in a free and fair manner with no external interference. On this, reliance is placed on *Manohar Lal Sharma versus the Principal Secretary & Ors.*, (2014) 2 SCC 532.

Directions

16. In view of the above and in the interest of justice, this Court is inclined to pass the following directions –

- (i) A Special Investigation Team shall further investigate the present case being Rampurhat Police Station Case No. 612 dated 13.12.2022.
- (ii) The Special Investigation Team shall be headed by an IPS officer of repute serving in the State namely, Dr. Pranav Kumar, presently posted as the Inspector General of Police, Swami Vivekananda State Police Academy, Barrackpore, West Bengal. He shall be assisted, among others, by Shri Bireswar Chatterjee, the Officer-in-Charge, Homicide Section of the Detective Department, Kolkata Police. Dr. Kumar shall chose his team of other officers from the Kolkata Police and/or West Bengal Police for assisting him in investigation. However, the Team shall not include any officer who was earlier involved in the investigation of this case. The State shall extend full co-operation in this.
- (iii) The Team shall be constituted within a week from this date and the present Investigating Agency shall hand over the case diary and other relevant materials to the Team at the earliest. Till such Special Investigation

Team is formed, the present investigators shall not conduct any more investigation and can only take routine administrative steps.

(iv) The Special Investigation Team shall not report to the State and shall file regular reports before the jurisdictional Court/Magistrate. However, no report in final form shall be filed without the leave of this Court.

(v) This Court shall monitor such investigation.

(vi) All steps taken during investigation shall be videographed.

(vii) The petitioner and the accused officers of the CBI shall co-operate with the investigation of the case in full measure.

(viii) The direction passed earlier not to take any coercive steps against the accused officers of the CBI shall continue until further orders. However, it is clarified that this does not amount to a blanket exemption from physical interrogation as opposed to virtual one.

(ix) After the Special Investigation Team takes over charge within a week from this date, it shall file a report to that effect before this Court.

16.1 The connected applications, thus, stand disposed of without any further order.

17. The State of West Bengal, through the office of the learned Government Pleader, shall communicate this order to Dr. Pranav Kumar and to Shri Bireswar Chatterjee forthwith.

18. List this matter for report by the Special Investigation Team on 15.05.2023 at 2 p.m. under the heading 'To Be Mentioned.'

19. Parties shall act on a server copy of the order obtained from the official website of the High Court at Calcutta.

(Jay Sengupta, J.)

SM