

April 22, 2022
Item Nos.1 & 2
Court No.1
SG/gd/ssd/
jks/ss

WPA(P) 168 of 2022

Pallabi Chatterjee and others
vs.
State of West Bengal and others

with

WPA(P) 169 of 2022

Tiyasa Biswas
vs.
State of West Bengal and others

Ms. Susmita Saha Dutta,
Ms. Jayita Dhar Chakraborty, Advocates
...for the Petitioners in WPA(P) 168 of 2022

Mr. S.N. Mookherjee, Id AG
Mr. Amitesh Banerjee, Sr. Adv.
Ms. Ipsita Banerjee,
Mr. Nilotpal Chatterjee, Advocates
... for the State

Mr. Dhiraj Trivedi, Id ASGI
Ms. Susmita Sarkar, Advocate
... for the Union of India

Mr. Billwadal Bhattacharyya, Id ASGI
Mr. Samrat Goswami, Advocate
... for the CBI

Ms. Pinky Anand, Sr. Advocate
Mr. Pramit Kumar Ray, Sr. Advocate
Ms. Chandreyi Alam,
Mr. Swatarup Banerjee,
Mr. Lokenath Chatterjee,
Mr. Krishnendu Bhattacharya,
Ms. Pranati Goswami,
Ms. Sanchita Barman Roy,
Ms. Ashima Roy Chowdhury,
Ms. Sabita Roy,
Ms. Tripti Mukherjee,
Ms. Sarda Sha,
Ms. Rini Bhattacharyya,
Ms. Anindita Maity,
Ms. Namrata Singh,
Mr. Sukanta Ghosh,
Mr. Subhajt Das, Advocates
...for the Petitioner in WPA(P) 169 of 2022

Mr. Anish Kumar Mukherjee,
Mr. Amrit Sinha,
Mr. Surajit Saha, Advocates
...for the respondent No.2 in WPA(P) 169 of 2022

In pursuance of the previous direction of this Court, learned Advocate General has produced the case diaries as also reports in the form of affidavits in respect of each of the incidents disclosing the steps which have been taken till now by the investigating agency.

Each of the five incidents of rape, which are subject matter of first petition are taken up today separately as under:

- (1) **Moynaguri incident:** learned counsel for petitioners has submitted that there was an attempt to rape a minor girl and thereafter the threat was extended to her as a result of which she had attempted self-immolation. She has further submitted that the victim is still in the hospital and there was a delay in filing the application for cancellation of bail of the accused.

Learned Advocate General has referred to the report in the form of affidavit filed today and has submitted that the statement of the victim has already been recorded under Section 164 of the Cr.P.C. and the same was also videographed and the accused was granted bail under Section 438 of the Cr.P.C.

by the POCSO Court and after the second incident of extending threat and attempt by the victim for self-immolation, a separate case has been registered and the accused persons have been arrested in that case. He has further submitted that in the earlier case, the application for cancellation of bail has been filed on 19.04.2022 which is likely to come up for hearing on 25.04.2022. He has also pointed out that the statements of as many as 15 witnesses have been recorded under Section 164 of the Cr.P.C. and has referred to the steps which have been taken by the investigating agency. He has also submitted that in respect of the first incident, the victim had not agreed for the medical examination and this has been recorded by the medical officer.

The report filed by learned Advocate General is taken on record.

- (2) **Netra Incident:** In this incident the complaint was made on 13.04.2022 against the named accused in respect of commission of rape on a minor girl on 07.04.2022.

Learned counsel for the petitioners has submitted that to her knowledge the investigation has not been carried out

properly and the medical examination of accused and the victim has not been done, there was a delay in lodging the FIR and no reason for the same has been recorded. Learned counsel for the petitioner has referred to various steps which were required to be taken for proper investigation. Learned Advocate General, referring to the report in the form of affidavit, has pointed out that the offence against the accused person was registered on the same day of making the complaint and the accused was also arrested on the same day. He has also pointed out the seizure list and has submitted that both the victim and the accused were medically examined and that the statement of the victim has also been recorded under Section 164 of the Cr.P.C. The report further reveals that the steps are being taken for sending the seized items to the FSL by the competent authority.

An issue has also been raised that wearing apparels of the victim and the accused may have been washed multiple time after the incident, therefore, they are required to be sent to FSL which has the facility of DNA test of such multiple time washed apparels.

Learned Advocate General is directed to look into this aspect of the matter and ensure that needful is done.

The report filed by learned Advocate General is taken on record.

- (3) **Namkhana incident:** It is a case where on 08.04.2022 the gang rape was committed upon a lady aged about 40 years and kerosene was poured and allegedly an attempt was made to burn her.

Submission of learned counsel for petitioners in WPA(P) 168 of 2022 is that the investigation has not been done properly, kerosene jar which was used for pouring kerosene on the victim has not been seized, statements of the neighbours who had heard the cries of the victim at the time of incident have not been videographed, place of occurrence has not been sealed and no offence under section 307 of the IPC has been registered.

Connected WPA(P) 169 of 2022 has been filed in respect of this incident and the submission of learned counsel for the petitioner is that from 09.04.2022 till 11.04.2022 when the second report was made, no medical examination of the victim

was done and no investigation was carried out. She has further submitted that the report relating to offence of rape was not initially registered and subsequently on account of pressure by local residents, another FIR on 12.04.2022 was registered in respect of the offence of gang rape.

She has also submitted that the statements of witnesses under section 164 of the Cr.P.C. were not videographed and though the victim was found bleeding, but bloodstained articles were not seized from the spot, no crime reconstruction scene of the incident was done, chemical test to trace out the bloodstain was not done, clothes of the victim were not seized for DNA test and that local police officers were pressuring the husband of the victim and also the victim to withdraw the complaint.

In this background, a prayer has been made to transfer the case to any independent agency like the CBI.

Learned Advocate General has produced the case diary as also the report in the form of affidavit and referring to the report he has pointed out that initially offences were registered on the basis of the complaint

dated 09.04.2022 and thereafter the information was received on 11.04.2022 about the rape which was committed on the victim, therefore, offence under section 376D of the IPC was registered.

He has also pointed out that the statement of the victim was recorded under section 161 of the Cr.P.C. and the statements of witnesses were recorded under section 161 of the Cr.P.C. and the videography was also done. Seizures were made and the statements of witnesses whose names have been disclosed in the report were recorded under section 164 of the Cr.P.C. On 12.04.2022, the main accused persons have been arrested. The medical examination of the victim and the arrested accused was done on 11.04.2022 and 12.04.2022, respectively and on 14.04.2022 the statement of the victim under section 164 of the Cr.P.C. was recorded.

The report in the form of affidavit reveals that the medical officer has found burn injuries on the victim.

We have also perused the case diary in this case.

Having examined the case diary and considering the report in the form of affidavit as also taking note of the allegations which have been made and the progress of investigation, we deem it proper to direct that the investigation in this case will be done under the supervision of Smt. Damayanti Sen, IPS, Special Commissioner of Police, Kolkata.

If Smt. Damayanti Sen has any difficulty in supervising the investigation, she will be at liberty to intimate this Court on the next date of hearing.

We make it clear that we have not rejected the prayer for handing over the investigation to CBI and in case if it is found that the investigation has not been carried out in an impartial and fair manner, then the said prayer can be later considered at an appropriate stage.

We also direct that the victim, her family members and the witnesses will be extended full protection by the competent authorities.

- (4) **Shantiniketan incident:** In this incident a minor girl aged about 15 years was gang-raped by 4/5 persons on 15.04.2022.

Submission of learned counsel for petitioners is that for three days no arrest was made. The victim is a scheduled tribe girl but no offence under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 has been registered and prime accused has not been arrested till now. She has also submitted that for some reason the victim was changing her version and within 24 hours medical examination was not done. She has further submitted that the investigation is not progressing in proper direction and it is not clear as on what basis the accused persons have been picked up and the offence under Section 367 of the IPC ought to have been registered which has not been done. She has also submitted that the arrest on the basis of sketch map is suspicious.

As per earlier direction of this Court, the case diary and report in the form of affidavit have been produced.

Learned Advocate General has submitted that the offence was registered on the same day i.e. 15.04.2022 and the sketch map was made on 15.04.2022 and the seizures were made from three relevant places i.e. where

the victim was sitting with her friends together, where the offence of rape was committed and where the victim girl was raped and he has also submitted that the medical examination of the victim was done on the same day and the statement of the victim under Section 164 of the Cr.P.C. has been recorded. The wearing apparels of the victim were seized and the message was sent to the Child Welfare Committee on 15.04.2022 itself. The medical report of the victim had been collected and her statement under Section 164 Cr.P.C. is also recorded and two persons have been arrested and two other persons are apprehending. He has also referred to the various steps taken by the investigating agency as mentioned in the report.

The report is taken on record.

- (5) **Pingla incident:** In this incident, on 11.04.2022 at about 22.00 hrs the victim was allegedly sexually assaulted by one Abhijit Mondal, a member of local gram panchayat. The offence was registered on the next day.

Learned counsel for petitioners has submitted that the accused is a leader of

TMC and the panchayat member, therefore, there is no possibility of fair investigation and the victim is receiving threats and earlier she had stated about commission of rape but later changed her version stating that there was an attempt to commit rape. She has further submitted that offences under Sections 376(N), 367 and 368 of the IPC ought to have been registered.

Learned Advocate General has produced the report in the form of affidavit alongwith the case diary disclosing that the offence was registered on 12.04.2022, the medical examination of the victim was done on the same day, her wearing apparels were seized, the statement of the victim under Section 164 of the Cr.P.C. has been recorded, the accused has been arrested and his medical examination has been done and the wearing apparels of the accused have also been seized and the statements of two key witnesses have been recorded under Section 164 of the Cr.P.C.

Considering the nature of allegations which have been made and also after perusing the materials which have been placed before us, we are of the opinion that

the investigation in this case should be supervised by a senior lady police officer.

Learned Advocate General has produced a list of five such officers and after perusal of the same, we find that it would be appropriate that the investigation in this case be supervised by Smt. Parul Kush Jain, IPS, IGP, Traffic, WB.

Learned Advocate General is directed to file the report regarding further progress of investigation in all these matters on the next date of hearing and also to do the needful under the Victim Compensation Scheme in accordance with law.

List on 02.05.2022.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]