

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 802 of 2024

With

IA No. CAN/1/2024

Enforcement Directorate

Versus

The State of West Bengal & Ors.

For the petitioners : Mr. S.V. Raju, Id. ASGI,
Mr. Dhiraj Trivedi Id. DSGI.,
Ms. Debjani Ray,
Mr. Samrat Goswami.
Ms. Sohini Dey
.....Advocates

For the State : Mr. Kishore Dutta Id. AG,
Mr. Amitesh Banerjee Id. SSC,
Ms. Ipsita Banerjee,
Mr. Debangsu Dinda
.....Advocates

For the CBI : Mr. Billwadal Bhattacharyya Id. DSGI,
Mr. Amajit De.
.....Advocates

For the Intervenor : Mr. Biswarup Mukherjee
..... Advocate

Heard lastly on : 17.01.2024

Judgment on : 17.01.2024

Jay Sengupta, J:

1. This is an application, inter alia, praying for transfer of investigation in Nazat Police Station Case No. 9 of 2024 and Bongaon Police Station Case No. 18 of 2024 from the State police to the Central Bureau of Investigation.

The connected application seeks similar transfer of investigation in Nazat Police Station Case No. 8 of 2024.

2. Learned Additional Solicitor General of India representing the petitioner/Enforcement Directorate submits as follows. The Enforcement Directorate was investigating a money laundering case involving the infamous Public Distribution System Scam. A Cabinet Minister of the State was arrested in it. Money trail was found in respect of two other significant political figures of the State owing allegiance to the ruling political party. They were Shankar Adhya and Sajahan Sheikh. On 05.01.2024 in the morning, the Enforcement Directorate held raids at the residence of the said Sajahan Sk. in order to search and seize relevant documents. The said suspect did not open the door despite being contacted over phone. Thereafter, his phone became busy. Later on, it was found from the tower location analysis of mobile phone that the suspect was in all probability inside his residence or very near. He called up his followers, the local miscreants to come and frustrate the raid. Some people even came in buses. About 1000 to 3000 people gathered being armed with sticks, bricks and stones. They attacked the raiding party members and the accompanying personnel of the CRPF. They did not even spare media persons present. Three E.D. Officials were seriously injured and had to be hospitalised. In collusion with the miscreants, a false FIR was registered as the first one being FIR No. 7 of 2024. A much watered down version was given in the suo moto FIR of the police being FIR No. 8. It is evident from the records that although the GD entry for the FIR No. 8 preceded the GD entry for the FIR No. 7, yet the counter version, evidently a false one, given by the caretaker

of the accused was treated as the first FIR. There are interpolations in the same in adding a charge of outraging modesty of females. The proceeding in respect of the purported first FIR has been stayed by a Co-ordinate Bench of this Court upon making scathing observations. Even in the FIR No. 9 of 2024 filed by the Enforcement Directorate Official, the more serious Sections alleged were not included. Subsequently, only a charge of Section 325 of the Penal Code was added. Charges of attempt to murder, grievous hurt by dangerous means and dacoity were deliberately omitted. In the instant case, belongings of the E.D. Officers like laptops, wallets and other documents had also been looted away. The police did not arrest anyone from the spot. Till date, out of so many accused miscreants, only seven have been arrested. The prime accused is a very influential political leader and a local maffia. The predicate offences and the PML Act case involves a Minister in the State Cabinet. Therefore, it is an appropriate case which should be transferred to the CBI. In *Vinit Narayan*, (1998) 1 SCC 226, the Hon'ble Apex Court has stipulated certain conditions so that the CBI could remain neutral. Upon inquiry, it is submitted that the predicate offences are still investigated by the State police. On the hand, the State police is trying to have access to the investigation that is being done by the Enforcement Directorate in the garb of investigating the present case. The recent praying for adding certain graver sections to the case is only a ploy to retain investigation. At this stage, no submission is advanced in respect of Bongaon P.S. Case No. 18 of 2024.

3. Learned Advocate General representing the State submits as follows. At present the local police is investigating the instant case, however, under

the supervision of the SDPO, the DSP and the Circle Inspector. Till date seven persons have been arrested. Sections 325, 337 and 189 of the Penal Code have been added to the charges. The police have now made prayers for adding Sections 307, 326, 392, 395, 397, 426, 440, 342, 143 and 109 of the Penal Code. Immediately after the incident, a police picket was put up in front of the places of occurrence. Three raids were held at the purported place/residence of Sk. Sajahan. However, no effort was made to break open the lock. Now, a prayer would be made before the Learned Magistrate for permission to break upon the lock. Information formally given by the E.D. Officials recorded by the police was received at about 20.10 hours. The incidents did not point fingers directly at the police. In fact, it was the local police who had rescued the E.D. Officials and others from the clutches of the mob. From the available videos, the exact footage of assault is not available. The E.D. Officials are also not cooperating with the investigation. No document or even the ECIR was provided. The names of the personnel of the E.D. and the CRPF were not provided for the police to examine them. Only on multiple efforts, some examinations could be done. On the date and approximate time of the incident some of the CRPF personnel were actually found having breakfast at a nearby restaurant. It is doubtful that one Central Agency can pray for transfer of investigation by the State police to another Central Agency. The criteria for transfer of investigation as laid down by the Hon'ble Apex Court are not fulfilled in the present case. Reliance is placed on the decisions in the State of West Bengal vs CPDR, (2010) 3 SCC 571 and Bimal Gurung, (2018) 15 SCC 480.

4. Learned DSGI representing the CBI submits that the CBI is agreeable to investigate the cases. But, nominating an officer for such purpose will take some time.

5. I have heard the Learned counsels and have perused the writ petition, the application and a copy of the case diary in the said FIR No. 9 of 2024. The copy has again been kept in a sealed envelope.

6. A horrific incident took place in the district of North 24 Parganas in the morning of 05.01.2024. A group of officials of the Enforcement Directorate trying to investigate offences under the PML Act were surrounded by an armed mob of 1000 or more, attacked, robbed of their articles, assaulted and forced to leave the intended places of search. Three officials of the E.D. were seriously injured. Anyone could have lost his life. The CRPF personnel exercised restraint in not escalating the situation.

7. It appears that before an FIR could be registered by anyone or even suo moto by the police about the serious offences committed against the E.D. Officials, a counter version was recorded as an FIR being FIR No. 7 of 2024 alleging theft and molestation. The proceeding has been stayed by a Co-ordinate Bench of this Court upon making damning observations against the police. There are alleged interpolations in the said counter version.

8. Although the corresponding GD entry for the said FIR No. 7 was allegedly preceded by the GD entry for the suo moto FIR, yet the FIR No.7 of 2024 was registered as the first. If the E.D. personnel could not enter the said premises, the question of stealing or molesting women would not arise. The issue of quashing of proceeding is pending before a Co-ordinate Bench. However, the very registration of such an FIR, that too before the prior GD

entry is registered as an FIR, casts a serious shadow of doubt on the impartiality of the police officers of the Nazat Police Station. This is good enough reason to exclude at least the personnel of the Nazat Police Station or its outpost from conducting the investigating of the instant case.

9. There are several other flaws in the investigation conducted by the State police.

10. First, there was no serious effort made to enter into the residence of the accused in question. Till now, no permission has been sought to break open the door.

11. Although, it was alleged in the FIR of the E.D., at least by 20.10 hours, that conversation had been there over phone with the accused and the tower location of the mobile was found at the owner of the said residence, all the allegations made in the said FIR have not been properly explored.

12. Moreover, despite the injury report of one of the victims and his statement that he was hit by an accused with a stone on his head, no charge under Section 307 of the Penal Code was added. Other applicable serious provisions of law like dacoity, grievous hurt by dangerous means were also omitted from the FIR.

13. Even the suo moto FIR did not contain relevant provisions of law and presented a rather watered-down version.

14. It is indeed quite astounding, to say the least, that the State police are having no information on the whereabouts of a prominent political leader of the locality like the accused Sajahan Sheikh and are unable to arrest him.

15. On the other hand, it is also no less surprising that the E.D. who is now praying for investigation of the instant case of mob violence by the CBI, had not prayed for transfer of investigation of cases involving the predicate offences from the State police to the CBI. In the instant case involving mob attack on officials of the E.D. the question of involvement of the Minister or other influential accused other than the local one would apparently be more remote than in the cases involving the predicate offences.

16. The thrust of the petitioner that only the CBI should investigate the case and be able to arrest the suspect has to be juxtaposed with the inability of the ED itself, another powerful central agency accompanied by the CRPF personnel, to search and seize, far less arrest the suspect.

17. However, the involvement of the CBI personnel in the investigation of the present cases would be an imperative considering the ineptitude of the local police to handle the matter as discussed above and in view of the allegation of bias levelled by the petitioner, a premiere investigating agency.

18. A pan-India organisation like the CBI would also be able to deal better with inter-State or inter-country measure if it becomes necessary to undertake the same. One cannot rule out the possibility of any accused illegally crossing over to a neighbouring country.

19. The State has a Constitutional obligation to uphold the Rule of Law and not permit any form of anarchy or mobocracy.

20. In order to unearth the truth and to apprehend the miscreants responsible, a concerted effort is required from both the Central and the State agencies. Thus, to instil confidence in the people and to have a fair and effective investigation, for the present, a Special Investigation Team (SIT)

consisting of personnel from both the CBI and the State police need to investigate the alleged offences.

21. As FIR Nos. 8 and 9 of 2024 of the Nazat Police Station both pertain to allegations made in this same line, the cases need to be investigated by the same agency.

22. In view of the above discussions and in the interest of justice, this Court is inclined to pass the following directions:

(a) Further investigation of the Nazat Police Station case Nos. 8 and 9 of 2024 shall be conducted by a Special Investigation Team headed by an officer of the CBI of the rank of a Superintendent of Police to be nominated by the CBI and Mr. Jaspreet Singh, IPS, presently posted as the Superintendent of Police, Islampur Police District. The CBI shall make the nomination by tomorrow i.e., 18.01.2024.

(b) Each of the Team Heads shall be at liberty to induct equal number of members in the team from the State Police and the CBI, respectively for the purpose of investigation.

(c) For effecting search, seizure or arrest, the SIT shall be at liberty to seek assistance from the State Forces as well as the Central forces.

(d) The Special Investigation Team shall not report to the State or the Centre, but to the jurisdictional Magistrate including in respect of regular steps to be taken and shall file required reports there. This Court shall monitor such investigation.

(e) No report in final form shall be filed without the leave of this Court.

(f) No police personnel from the Nazat Police Station or any of its outpost/s shall be involved in investigating the offences.

(g) In fact, the present Investigating Officer shall not conduct any further investigation from this very moment and handover the case diary and all the materials collected during investigation to the SIT.

(h) The existing arrangements of police pickets and CCTV cameras shall continue till decided otherwise by the SIT.

(i) The SIT shall file a report about progress of investigation on the next date.

List this matter under the heading "To Be Mentioned" on 12.02.2024 at 2.00 p.m.

Parties shall act on a server copy downloaded from the official website of this Court.

(Jay Sengupta, J.)