

S/L 64  
21.06.2022  
Court. No. 19  
GB

WPA 11138 of 2022

Anima Roy  
VS  
The State of West Bengal & Ors.

*Mr. Swatarup Banerjee,  
Mr. Krishnendu Bhattacharya,  
Mr. Lokenath Chatterjee,  
Mr. Sukanta Ghosh,  
Mr. Manabendra Bandhapadhyay,  
Mr. Saheb Sundar Kha,  
Sk. Sariful Haque,  
Mr. Subhajit Das.*

*...for the Petitioner.*

*Mr. Jishnu Chowdhury,  
Mr. Sutanu Chakrabarti.*

*...for the State.*

Affidavit-of-service filed in Court today, be kept with the record.

The writ petition has been filed claiming transfer of the investigation to the CBI. The allegation is that the police authorities have failed to function as an independent investigating agency while investigating into the death of the petitioner's husband, who died after sustaining injuries while in jail custody.

It is alleged that this is a case of custodial death, but NHRC guidelines have not been followed. The allegation is that the police authorities conducted the post mortem without informing the relatives of the petitioner. The inquest and the inquiry by the Magistrate was done without informing the relatives and the police authorities have not yet taken steps against the offenders.

It is submitted that the petitioner apprehends that the investigating agency will protect their colleagues, who may be involved in the alleged crime, committed on the victim.

It is the specific case of the petitioner that the arrest of the victim was also under very suspicious circumstances as the victim was not involved in any offence. Notice under Section 41A was also not issued upon the victim before his arrest. Such failure on the part of the investigating agency was in violation of the decision of the Hon'ble Apex Court in the matter of Arnesh Kumar versus State of Bihar and Anr, reported in (2014) 8 SCC 469.

Mr. Chowdhury, learned Additional Government Pleader has produced some records. It is submitted that the victim was arrested on June 11, 2022. He was found medically fit. He was produced before the learned jurisdictional Magistrate on June 12, 2022. The victim was sent to the judicial custody. On June 14, 2022 at 10.40 a.m. the victim was found dead when he was in the correctional home. The magisterial inquest was done on June 14, 2022. Inquest was videographed. Post mortem was done on June 15, 2022. The post mortem was videographed. Viscera has been preserved and intimation was sent to all the authorities as per the decision of the Hon'ble Supreme Court.

The post mortem report indicates that there were abrasions on the entire body of the victim. Thus, it prima facie appears that the victim may have sustained injuries while in custody.

The inquest report which has been submitted before this Court, indicates that the wife of the victim, Anima Roy was present during such inquest.

The investigation is at a very very primary stage. Prima facie, this Court finds that the guidelines of the NHRC and the provisions of Section 176 of the Code of Criminal Procedure have so far been complied with. At this instance, it would not be proper for the Court to direct investigation by the CBI, without allowing the investigating agency to file their affidavit in order to disclose the documents relied upon and the progress made in the investigation. The allegations against the jail officials and the police authorities are very serious in nature. The truth must be unearthed and the family of the victim deserves to have the investigation done in a free and impartial manner. The time when the victim was taken to the correctional home after the order of the learned Magistrate, whether any police authorities went to the correctional home on the evening of the same day or the morning of the next day to interrogate the victim, before the victim passed away are to be ascertained on the basis of records and CCTV footages. Infighting amongst inmates will also have to be probed. Records of the orders passed by the learned Magistrate shall also be annexed to the affidavit as there is an allegation of non-compliance of Section 41A of the Cr.P.C.

The Court grants an opportunity to the investigating agency to proceed with the investigation under the supervision of the Superintendent of Police, Horah Rural

Police District so that the offenders are identified and taken to task as expeditiously as possible. The court shall decide the issue of transfer of the investigation upon perusal of the progress in the investigation.

This Court is of the view that the petitioner must be given some protection by the police to ensure that she is not harmed in any way. Two lady constables be posted at the residence of the petitioner.

Let affidavit-in-opposition be filed within a period of two weeks; reply thereto, if any, be filed within a week thereafter.

Let the matter appear on July 12, 2022 at 2:00 p.m. for further consideration.

**(Shampa Sarkar, J.)**