

AD-05
Ct No.09
26.02.2024
TN

WPA No. 4069 of 2024

XXXXX
Vs.
The State of West Bengal and others

Mr. Avik Ghatak,
Mr. Sayan Chattopadhyay,
Mr. Ivan Sarkar

.... for the petitioner

Mr. Anirban Ray, Ld. GP,
Mr. Jayanta Samanta,
Mr. Supriya Majumder

.... for the State

Mr. Pawan Kumar Gupta

.... for the respondent no.3

- 1.** The petitioner is the victim in a POCSO case and seeks a change of the Public Prosecutor who is handling the criminal case initiated on the basis of her complaint.
- 2.** Learned counsel for the petitioner submits that the petitioner has serious reasons to apprehend that the case will not have justice in the hands of the current Public Prosecutor.
- 3.** It is shown from the records that when the petitioner made an application for further investigation in connection with the particular case, an objection thereto was considered by the trial court in its order dated February 12, 2024, whereas a copy of the said objection was handed

over to the petitioner through her Advocate only at 06.40 p.m., that is, after the hearing was over.

- 4.** Learned counsel further submits that the present respondent no.3 is a local councillor having influence. It is alleged that an application had been taken out for segregation of the case against the respondent no.3/councillor, by treating the same to be a regular trial and not a trial under the rigours of the POCSO Act.
- 5.** Hence, the petitioner has sufficient apprehension that the respondent no.3 is being attempted to be protected by the authorities.
- 6.** Learned counsel for the respondent no.3 squarely opposes the allegations made by the petitioner. It is submitted, by handing over a typed copy of the purported deposition of the victim/petitioner, that from the said deposition, it will be evident that the case is being conducted in a proper manner by the Public Prosecutor.
- 7.** Learned counsel also places reliance on the complaint made by the petitioner to argue that the attempt of the petitioner is only to malign the respondent no.3.
- 8.** Learned counsel for the State submits that the State is neutral in the matter and shall abide by whatever order is passed by this court.

- 9.** Certain features of the present case transpire from the materials annexed to the writ petition as well as the copy of the deposition handed over in court by none other than learned counsel for the respondent no.3.
- 10.** It appears from the internal third page of the complaint, on the basis of which the FIR was lodged, that allegations of a serious nature have been made against the respondent no.3, who happens to be a councillor.
- 11.** The said allegations squarely come within the purview of the POCSO Act.
- 12.** Although, merely because the respondent no. 3 is a councillor, he need not be castigated on such ground alone, in the present case, in view of the nature of the allegations made against him, there is absolutely no reasonable basis whatsoever for the authorities to have filed an application for segregation of the allegations against him in a separate trial, out of the purview of the POCSO Act.
- 13.** In fact, such attempt was thwarted by a coordinate Bench of this court on a challenge being preferred by the petitioner and the offences were clubbed together again.
- 14.** It appears from the deposition, a copy of which has been handed over by learned counsel for the

respondent no.3 today, that apart from usual questions regarding age etc. of the victim, question no. 12 was “What happened to you”. Question no. 13 to question no. 22 thereafter are identical, being “What happened next”.

- 15.** The same exercise is repeated again later in the deposition.
- 16.** It transpires from the nature of the questions made to the victim/petitioner that the specific nature of the allegations made by the petitioner were not reflected in the line of questioning.
- 17.** In any event, it would be premature for the writ court to enter into the merits of the case, which may go either way upon a valid trial. However, from the materials as indicated above, this court is sufficiently impressed by the apprehension of the petitioner to the extent that the prosecution case may suffer in the hands of the present Public Prosecutor.
- 18.** Since the Public Prosecutor has not been impleaded in the present case, it is made clear that none of the above observations shall be construed against the Public Prosecutor in any other case or affect her career adversely in any manner. In view of the extreme urgency, since the case is under the POCSO Act and the trial is ongoing and further delay may influence the trial

adversely, particularly keeping in view the influence which may be exerted by the respondent no.3/councillor, the matter is taken up on an urgent basis and disposed of here and now.

- 19.** WPA No. 4069 of 2024 is, accordingly, disposed of by directing the State to appoint some other person than the present Public Prosecutor, who is competent and having some experience in POCSO matters, to conduct the prosecution case-in-question. Such appointment shall be made forthwith, within forty-eight hours from now.
- 20.** It is made clear that it will be open to the petitioner to approach this court further in the event the petitioner is apprehensive of the newly appointed Public Prosecutor as well.
- 21.** There will be no order as to costs.
- 22.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)