

Bpg & Sg.
Sl.No1
May 30,
2022

W.P.A.(H) No.32 of 2022

Hafija Laskar
Versus
The State of West Bengal and others

Mr. Dipanjan Chatterjee,
Mr. Atanu Ghosh.
...for the petitioner.

Mr. Sabir Ahmed.
...for the State.

Learned counsel for the petitioner submits that the petitioner was acquitted in connection with a criminal case initiated against him. It is further contended that the custody of the petitioner has continued since 2008. It is submitted that there were subsequent cases initiated against the petitioner on criminal complaints being lodged. However, it is contended that since the petitioner was all along in custody, there was no scope of the petitioner committing such alleged offences.

Be that as it may, it is submitted that the petitioner is suffering from custodial torture. By way of corroboration of such apprehension, learned counsel submits that one of the accused persons in another case, in connection with which the petitioner was taken in custody as well, suffered from custodial

torture. As such, it is anticipated that the petitioner might also be undergoing custodial torture.

Learned counsel for the State contends that the petitioner has fled from custody while being taken to the police remand as per direction of the concerned Court.

By handing up a report in the form of an instruction, learned counsel submits that on April 28, 2022 at around 22.35 hrs, when the raid team were moving from Hingalganj-bound Hasnabad-Hingalganj Road towards Patlikhanpur, just after crossing Kalutala village, their vehicle met with a road accident and fell into left side 'nayanjuli' of Hasnabad-Hingalganj road where the entire police party sustained injuries on their person. Taking advantage of such situation, it is alleged that the said PC-accused somehow absconded from the police custody and fled away under the cover of darkness.

It is also stated that the Barasat District Police and Special Task Force (STF) parties combed the entire areas in search of the absconded fugitive but all such efforts went in vain.

Upon hearing learned counsel, we are of the following opinion:

First, since there is specific allegation of the petitioner having fled from police custody, it would not be prudent to issue a Writ of Habeas Corpus, which is a prerogative writ, at the instance of the petitioner.

Secondly, the petitioner was already in custody at the juncture when he fled. As such, there arose no question of illegal detention of the petitioner. In fact, from the annexures to the present writ petition, it is evident that the trial court directed remand of the petitioner to police custody, which negates the scope of the petitioner having been illegally taken in custody.

Thirdly, we do not find from the materials on record any scope of presumption or apprehension of custodial torture against the petitioner. In fact, the mere incident of alleged custodial torture against another person who has been in custody, being the accused in a different case (a near relative of the petitioner, namely Md. Ali @ Subrata Byne), cannot *ipso facto* raise presumption in the mind of the court regarding the custodial torture of the petitioner as well.

In such view of the matter, we do not find any scope of issuing a Writ of Habeas Corpus on the present writ petition.

Accordingly, WPA (H) 32 of 2022 is dismissed without any order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

(Ajoy Kumar Mukherjee, J.)