

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 483 of 2022

1. Rajesh Kacchap
2. Naman Bixal Kongari
3. Irfan Ansari

... Petitioners

-Versus-

1. State of Jharkhand, through Secretary, Department of Home, Jail & Disaster
2. State of West Bengal through Secretary, Home Department, Howrah
3. Union of India through Secretary, Home Department, New Delhi
4. Kumar Jaimangal @ Anup Singh

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

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| For the Petitioners | : | Mr. Indrajit Sinha, Advocate
Mr. Rishav Kumar, Advocate |
| For Respondent No.1 | : | Mr. Sachin Kumar, A.A.G.-II
Ms. Surabhi, A.C. to A.A.G.-II |
| For Respondent No.2 | : | Mr. Anil Kumar Sinha, Sr. Advocate
Mr. Amit Kumar Sinha, Advocate
Mr. Abhijeet Tushar, Advocate |
| For Respondent No.3 | : | Mr. Anil Kumar, Addl. Solicitor General of India
Mr. Vinod Kumar Sahu, Sr. Panel Advocate |

03/14.10.2022. This petition was heard yesterday and for certain clarification, it was directed to be listed today for Orders and that is how, this petition has been again listed for Orders.

2. It appears from the records and the order of the Division Bench of Calcutta High Court passed in C.R.M. (DB) No.2782 of 2022 that the cash in question was seized on 30.07.2022 in West Bengal, whereas, complaint has been filed on 31.07.2022 at Ranchi, which was registered as Zero FIR and the same was transferred to the West Bengal Police.

3. Mr. Ranjit Kumar, learned senior counsel yesterday pointed out that for the identical case, a case relating to same allegation being Kotwali P.S. Case No.159 of 2021 is pending before the State of Jharkhand. He submitted that entire allegation is at Ranchi. The petitioners and the complainant/respondent no.4 are the Members of the Legislative Assembly

of Jharkhand. He also submitted that the cause of action is arising within the territorial jurisdiction of this Court and accordingly the office objection with regard to territorial jurisdiction of this Court, is not tenable.

4. Today, the Court has heard at length Mr. Indrajit Sinha, learned counsel appearing for the petitioners as well as Mr. Sachin Kumar, learned A.A.G.-II appearing for the respondent-State of Jharkhand and Mr. Anil Kumar, learned A.S.G.I. appearing for the respondent-Union of India. Learned senior counsel Mr. Anil Kumar Sinha has appeared *suo motu* on behalf of the respondent no.2-State of West Bengal.

5. Mr. Sachin Kumar, learned A.A.G.-II appearing for the respondent-State of Jharkhand submits that the Division Bench of Calcutta High Court while granting interim bail to the petitioners has observed that it is expected that investigation shall substantially progress and report with regard to progress of investigation be filed on the adjourned day. It has also been observed in that order that the case pertaining to the petitioners, who are Members of the Legislative Assembly, it requires to be heard by a Special Court constituted for the trial of MP and MLAs and the case has been transferred to the court concerned.

6. Mr. Anil Kumar Sinha, learned senior counsel appearing for the respondent-State of West Bengal vehemently submits that the FIR has already been registered by West Bengal Police and investigation is going on and, therefore, this Court has got no territorial jurisdiction to pass order on the subject matter of West Bengal Police case and the investigation cannot be stayed, as has been held by several judgments of the Hon'ble Supreme Court. He further submits that the case was filed by the petitioners for transferring the matter to the CBI and the same was rejected by Calcutta

High Court in W.P.A. No.17739 of 2022 and in that case, it has been observed that Crime Investigation Department should continue the investigation in an independent, fair and unbiased manner with due promptitude.

7. Mr. Anil Kumar, learned A.S.G.I. appearing for the respondent-Union of India submits that admittedly the contents of Zero FIR suggest that alleged occurrence has taken place within territorial jurisdiction of the State of Jharkhand. He further submits that once after hearing all the sides this Court comes to the conclusion that Zero FIR was wrongly transferred, the entire subsequent developments will be a futile exercise.

8. Mr. Indrajit Sinha, learned counsel appearing for the petitioners in reply of objection of the respondent-State of Jharkhand and the respondent-State of West Bengal submits that part of action has taken place in the territory of Jharkhand. He repeated the argument of Mr. Ranjit Kumar, learned senior counsel and submits that the cash in question was recovered on 30.07.2022 in West Bengal and the complaint has been lodged on 31.07.2022 by one sitting MLA of the State of Jharkhand, which was registered as Zero FIR at Argora Police Station and it was transferred to West Bengal Police. He further submits that for recovery of cash, no separate FIR has been registered on 30.07.2022 by West Bengal Police. He also submits that Zero FIR transferred to West Bengal Police has been treated of receiving the cash in question also and this aspect of the matter has also been appreciated in so many words by the Division Bench of Calcutta High Court while considering the interim bail of these petitioners. He further submits that Calcutta High Court has only directed to submit

progress report on the adjourned day.

9. In view of the above submissions of the learned counsel appearing for the parties, it appears that very substantial question of law is arising in this petition as to whether the cause of action is shown to be occurred in the State of Jharkhand and why Zero FIR is required to be registered and the same is required to be transferred to another State. Looking into the contents of the complaint, it prima facie appears that cause of action has occurred in the State of Jharkhand. In Panchala P.S. Case No.276 of 2022, the date of occurrence is shown as 30.07.2022 and place of occurrence is shown as 'near Dhori, Bokaro, Jharkhand' and the name of complainant is shown as Kumar Jaimangal (Anup Singh), Occupation- MLA Bermo, Jharkhand and address is shown as 'Dhori, Bokaro, Jharkhand'. The written content of Kumar Jaimangal (Anup Singh), which is addressed to the Officer-in-charge, Argora Police Station, Ranchi clearly suggests that cause of action has taken place in the territory of the State of Jharkhand. The Calcutta High Court has examined the bail applications of the petitioners and interim bail has been granted to the petitioners in C.R.M. (DB) No.2782 of 2022. In the complaint, there is no averment of seizing of cash in question in West Bengal, which has also been considered by the Division Bench of Calcutta High Court and has observed as under:

"Having perused the FIR, we note a glaring omission in the document. Although the information that the petitioners had been arrested with unaccounted cash was in the public domain by the evening of 30.07.2022, this fact is significantly absent in the FIR which was lodged on the next day.

On the other hand, de-facto complainant appears to give an euphemistic description of events by claiming that the petitioners are 'stationed at Kolkata with a token amount'. Unwillingness of the de-facto complainant to come out with the real state of affairs i.e. petitioners had already been arrested even prior to his lodging complaint, raises doubt with regard to the credibility of the accusation.

Moreover, though the petitioners have been in police custody custodial interrogation for a fortnight, nothing is placed before us to corroborate the statement of the de-facto complainant that he had been approached by the petitioners on or around 30.07.2022 with offer of bribe to topple the Jharkhand Government.

It is nobody's case that the parties were in close proximity with one another. No electronic message between the parties has been retrieved. Nor CDRs of the petitioners collected during investigation show telephonic communication between them and the defacto complainant around the relevant time. This raises serious doubt with regard to the insinuation that offer of bribe had been made to the defacto complainant by the petitioners immediately prior to their apprehension."

10. There is no doubt that part cause of action is arising out of territorial jurisdiction of the High Court and the same can be entertained by the concerned High Court and on this point, Article 226(2) of the Constitution of India is very clear. The Court is conscious of the fact that investigation is not required to be stayed, as has been argued by Mr. Anil Kumar Sinha, learned counsel appearing for the respondent-State of West Bengal. That is not in dispute. However, the guidelines has been framed by the Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & others; (2021 SCC OnLine SC 315)***, that if the Court comes to the conclusion that certain interim order is required to be passed, it must be a speaking order. Very important question of law is involved in this petition, which is required to be answered by this Court including the office objection with regard to territorial jurisdiction of this Court and this Court comes to the conclusion that it is required to be answered after hearing all the sides.

11. Accordingly, the respondent-State of Jharkhand and the respondent-State of West Bengal shall file their counter affidavits, within four weeks.

12. Issue notice upon respondent no.4 under registered cover with A/D as well as ordinary process, for which, requisites etc. must be filed within a week.

13. Mr. Anil Kumar, learned A.S.G.I. appearing for the respondent-Union of India will assist the Court on the law point, on the next date of listing.

14. For seizure of the cash, separate FIR has not been registered and on Zero FIR, investigation is being done by the West Bengal Police.

15. A reference may be made to the judgment passed by the Hon'ble Supreme Court in ***Navinchandra N. Majithia v. State of Maharashtra; [(2000) 7 SCC 640]***. Paragraph 17 of the said judgment reads as under:

"17. From the provision in clause (2) of Article 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court."

16. In view of the above facts and considering that once charge-sheet is submitted, the matter will be more complicated. In that view of the matter, charge-sheet in connection with Panchla P.S. Case No.276/2022, dated 31.07.2022 shall not be submitted by the West Bengal Police, till the next date.

17. Let this matter appear on 01.12.2022.

(Sanjay Kumar Dwivedi, J.)

Ajay/