

April 20, 2022
Sl. No. 3 & 4
Court No.1
PA(SS)

WPA (P) 154 of 2022

IA NO: CAN/1/2022

Anindya Sundar Das

vs.

The State of West Bengal and Others

With

WPA (P) 157 of 2022

Shaista Afreen and Others

vs.

The State of West Bengal and Others

Mr. Phiroze Edulji,
Mr. Rajdeep Biswas,
Mr. Debapriya Samanta,
Mr. Sukanta Ghosh,
Mrs. Taslima Khatun,
Mrs. Avipra Sarkar, Advocates

... for the petitioner
in WPA (P) 154 of 2022

Ms. Susmita Saha Dutta,
Ms. Tiyasa Biswas,
Ms. Jayita Dhar, Advocates

... for the petitioner
in WPA (P) 157 of 2022

Mr. S. N. Mookherjee, Ld. AG
Mr. Samrat Sen, Ld. AAAG
Mr. Tapan Mukherjee,
Ms. Sanjita Ray, Advocates

... for the State

Mr. Dhiraj Trivedi, Ld. AASG
Mr. Ayanabha Raha, Advocates

... for the Union of India

Mr. Billwadal Bhattacharyya, Ld. Assistant Solicitor
General of India

Mr. Samrat Goswami, Advocates

... for the CBI

1. CAN 1 of 2022 in WPA (P) 154 of 2022 has been filed by the petitioner seeking various directions to

ensure the protection of the witnesses and family of the victim of gang rape incident dated 04.04.2022. The prayer includes concealment of identity of the witness and family members of the victim, conferring new identities to the witnesses and to the family members, relocate them after consultation to a safer place and to direct the Director, AIIMS to appoint a committee of psychologists/ psychiatrists to carry out a psychological evaluation to overcome deep trauma.

2. Submission of the learned Counsel for the petitioner is that one of the ruling party leaders of Bhagabangola Block President Mr. Afroze Sarkar has made some statements extending certain threats on account of which it has become necessary to extend protection to the witnesses and family members. He has prayed for extending the protection as provided under the Witness Protection Scheme, 2018 by placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Mahender Chawla v. Union of India** reported in **AIR ONLINE 2018 SC 829**.

3. Learned Advocate General has not opposed the prayer for extending protection to the witnesses and the family members of the victim.

4. The Witness Protection Scheme, 2018 provides for the types of protective measures to be undertaken for witness protection proportionate to the threat for specific duration. The Scheme also provides for protection of

identity on the basis of threat analysis report, the change of identity, relocation of witnesses. The Scheme defines witness protection application to be moved by the witness, his family member, his duly engaged counsel or IO/SHO/SDPO/Jail Superintendent in the prescribed form before the competent authority as also witness protection order to be passed by the competent authority detailing the witness protection measures to be taken. The competent authority has been defined to mean Standing Committee in each District chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of the Prosecution in the District as its Member Secretary. It also provides for State witness protection fund from which the expenses incurred during the implementation of witness protection order passed by the competent authority and other related expenditure are to be met.

5. Hon'ble Supreme Court in the matter of **Mahender Chawla (supra)** has taken note of the Witness Protection Scheme, 2018 and has directed the Union of India as well as State and Union Territories to enforce the Witness Protection Scheme, 2018 in letter and spirit and has further held that it shall be law under Article 141/142 of the Constitution till the enactment of suitable Parliamentary and/or State Legislations on the subject.

6. Learned Advocate General has fairly stated that in view of the judgment of the Hon'ble Supreme Court in

Mahender Chawla (supra) Witness Protection Scheme is now law of the land and even if the competent authority i.e. the Standing Committee has not been formally notified but its composition is mentioned in para 2(c) of the Scheme, therefore, the Standing Committee exists to which the application can be made and the prayer for witness protection can be considered by the Committee.

7. Having regard to the nature of allegation which have been made in the application it is necessary to extend protection to the members of the family as also witnesses of the incident. Hence, we permit the filing of the witness protection application before the competent authority as specified in Witness Protection Scheme, 2018 and on receipt of such application the competent authority is directed to take a decision and pass appropriate order for witness protection, proportionate to the threat perception, in accordance with the Scheme, without any unnecessary delay. Till the said application is decided, the concerned authority will extend full protection to the witnesses and family members of the victim and will also ensure suitable psychiatric/psychological treatment to them to come out of trauma. Considering the peculiar facts of the case we direct respondent State to bear the expenses of witness protection as may be directed by the competent authority.

8. CAN 1 of 2022 in WPA (P) 154 of 2022 is disposed of.

9. List on 2nd May, 2022.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]