

**In the High Court at Calcutta
Constitutional Writ Jurisdiction**

W.P.A 10504 of 2021

CBI ACB Kolkata

-Vs-

Shri Firhad Hakim @ Bobby Hakim & Ors.

**BEFORE: HON'BLE JUSTICE RAJESH BINDAL, CHIEF JUSTICE
(ACTING)**

AND

HON'BLE JUSTICE ARIJIT BANERJEE

Mr. Tushar Mehta, Ld. Solicitor General of India,
Mr. Y.J. Dastoor, Ld. Addl. Solicitor General of India

... For the Petitioner

Mr. Kishore Dutta, Ld. Advocate General,
Mr. Abhratosh Majumdar, Ld. Addl. Advocate General,
Mr. Sayan Sinha

.... For the State Respondents

Date: May 17, 2021.

The Court:

This court has been called upon to deal with an extra-ordinary situation where Chief Minister of the State can sit on a dharna outside the office of the Central Bureau of Investigation (for short, 'CBI') along with her supporters, which had investigated the case and was to present a charge-sheet in court against the accused who are senior party leaders of the party in power in the State, some of them being Ministers. Not only this, the Law Minister of the State was present in Court where the accused were to be presented along with mob of 2000 to 3000 supporters.

The case in hand was mentioned today to be taken up urgently by Mr. Y.J. Dastoor, learned Additional Solicitor General of India. He submitted that a letter of request has been sent by the CBI on official e-mail id of the Chief Justice of this Court and the Registrar General pointing out certain glaring facts regarding the manner in which the Chief Minister, Law Minister and other senior Ministers of the Government in the State of West Bengal along with their supporters in thousands were obstructing CBI in discharge of its official duties. A case was registered in terms of the order passed by this Court in WP No. 5243(W) of 2016 under Sections 120B IPC, Sec. 7, 13 (2) r/w 13 (1) (a) & (d) of the P.C. Act 1988 against number of accused. The allegation against them are that they had accepted substantial amount of illegal gratification from Mathew Samuel, a sting operator. Sanction for prosecution was granted by the competent authority and a charge-sheet was prepared to be filed before the jurisdictional court. The accused were arrested today in the morning and were to be produced in the court of CBI Special Judge (I) Kolkata. Immediately after their arrest, as they are political leaders of the party in power in the State, number of followers gheraoed the CBI office in Nizam Palace area and did not allow the CBI officers to move out of their office to enable them to produce the accused in court. The matter did not end here. The Chief Minister of West Bengal-Smt. Mamta Banerjee also arrived at the spot at 10.50 hours and sat on dharna along with the mob. Unconditional release of the accused was sought from the CBI office itself. It was under these circumstances that the matter was mentioned before this Court immediately in the after-noon today seeking a direction to the State to allow the CBI to discharge its function and enable them to produce the accused in court.

The prayer of Mr. Dastoor was accepted. The matter was directed to be taken up for hearing before the Division Bench today itself by passing the following order:

“Mr. Y.J. Dastoor, learned Additional Solicitor General of India mentioned a matter with reference to case no. RC 0102017A0010 and stated that he had already sent an e-mail to the Chief Justice of this Court and also the Registrar General bringing to their notice about the “Dharna” outside of the office of the CBI at Kolkata and the unruly behavior of certain political persons, as a result of which, the CBI officials are not being allowed to discharge their official function. The case pertains to arrest of certain political persons. He also mentioned that similar protests have been made outside the court where the accused are to be presented after arrest. He also mentioned that the Chief Minister of West Bengal also arrived outside the office of CBI at around 11 a.m. and sat in a ‘Dharna’ along with other political supporters demanding unconditional release of the accused by the CBI itself. The life of the CBI officials is said to be in danger who are confined in their office. He also mentioned that Mr. Kalyan Bandopadhyay, MP had forcibly entered the CBI office and started heckling the officers and the staff.

Considering the request made by Mr. Y.J. Dastoor, the registry is directed to list the aforesaid petition, which may be treated as filed on the judicial side, before this Bench today itself.

The Additional Solicitor General of India and the Advocate General be informed about the listing of the matter. A copy of the communication sent by CBI to this Court be also sent by the Additional Solicitor General of India to the office of the Government Pleader on the designated E-Mail Id immediately.

In view of the urgency pleaded by the learned Additional Solicitor General, we take cognizance of the matter on the basis of the communication sent to the Chief Justice in the form of a letter. However, we record the undertaking of the Additional Solicitor General that proper pleadings shall be brought on record by May 19, 2021.”

This is how the matter is before this Court.

Mr. Tushar Mehta, learned Solicitor General of India submitted that the CBI registered the case on the direction issued by this Court and arrested the accused, some of whom are members of the State Cabinet. These were to be produced the court, however, the CBI office from where the accused were to be taken to the court was gheraoed by the political supporters of the persons in custody. The crowd was 2000 to 3000. Stone pelting was resorted to. Some of the supporters even entered the office of CBI and manhandled the staff present there. Not only this, the Chief Minister of the State-Smt. Mamta Banerjee also came at the spot at 10.50 hours and sat on Dharna there. The matter did not end here. The Law Minister of the State went to the court where the accused were to be presented along with crowd of 2000 to 3000 supporters and remained in court throughout the day. This was the ground reality under which CBI was to function and the Court below was to hear the arguments and pass the order. It is a case in which there is total failure of rule of law. The justice is not only to be done but seen to have been done. It is a case in which pressure was sought to be put on the officer concerned with mob and the Chief Minister & the Law Minister and other Ministers directly present there along with mob. Referring to the provisions of Section 407 Cr.P.C., he submitted that the provision clearly provides for

different situations under which trial of the case can be transferred by this Court. In case there is apprehension that fair and impartial trial is not possible or it is expedient in the ends of justice. This power can be exercised even suo-motu by this Court seeing the entire facts situation. He further submitted that arguments in the learned Court below where the accused could be produced only through virtual Court are over and the order is to be passed. The entire exercise was to put pressure. The accused persons are still in the custody of CBI.

As the issue of law and order in the State had arisen, learned Advocate General was requested to assist the Court. He submitted that Nizam Palace where the CBI Office is situated, the major part of it is protected by Para Military Forces. Whenever any senior leader of the party is arrested, supporters always collect there. Senior police officers along with 100 police officials were on duty and no untoward incident was allowed to be happen. CBI officers were provided full protection by the local police for discharge of their duty. There is no official complaint filed by the CBI with the police about any incident. However he did not deny the fact that the Chief Minister- Smt. Mamta Banerjee was there in the CBI office from 11 A.M. to 5 P.M. He further submitted that if the letter written by the CBI is considered, there is no prayer for transfer of enquiry or trial of the case.

With reference to the arguments in terms of provisions of Section 407 Cr.P.C. raised by the Ld. Solicitor General of India, it was submitted that the matter has to be listed before a Single Bench. There are certain pre-conditions which are required to be complied with for filing an application. It has to be accompanied by an

affidavit. The material before the Court is not sufficient to exercise that power. He further submitted that he did not have any instruction with regard to the presence of the Law Minister in the Court. It was further argued that in case any application is filed under Section 407 Cr.P.C., all the affected parties are to be heard which include victim, accused and the witnesses of the case as well.

In response, learned Solicitor General of India submitted that powers under Section 407 Cr.P.C. can be exercised by the Court if it is expedient in the ends of justice. The letter sent by the CBI to this Court mentions the presence of Chief Minister in the CBI Office. That itself is a sufficient ground for transfer of the case. The matter may be taken up immediately as otherwise the people will get a message that with mobocracy, any order can be secured by putting pressure. In any case he undertakes to file a formal petition as well placing on the record the entire material. In case any of his argument raised or the facts stated by him are found to be incorrect, Section 407(7) Cr.P.C. provides for dismissal of such petition with costs.

Learned Advocate General submitted that he does not have any direct information about any order passed by the Court below where the accused were produced. However, the media reports that the bail has been granted. He further referred to the provisions of Section 167 Cr.P.C. which provide that for grant or extension of police remand, the accused have to be present in person in the Court, whereas for judicial remand, it can be virtual.

Heard learned counsel for the parties.

The facts which are not in dispute are that a case under the Prevention of Corruption Act was registered against many accused including some of the Ministers in the present Government in the State of West Bengal, on the directions issued by this Court. In view of various orders passed by the Supreme Court, the investigation and prosecution of cases against M.P.s and M.L.A.s were to be monitored by the Court. It was only thereafter that the matter was expedited. Sanction of prosecution was granted by the Competent Authority and four accused were arrested in the morning today. They were to be produced in the Court. Immediately after their arrest, the mob started collecting outside the CBI Office. Not only this, at 10.50 hours, even the Chief Minister of State- Smt. Mamta Banerjee sat on *dharna* in the office of CBI. It is claimed by Mr. Tushar Mehta, learned Solicitor General of India that she was demanding their unconditional release but the fact that she was present there and some supporters were also there, was not denied by learned Advocate General. In addition to that the stand of learned counsel for the C.B.I. is that the Law Minister of the State along with supporters mobbed the Court where the accused were to be presented along with charge sheet. The Law Minister remained in the Court complex throughout the day till the arguments were heard. In these facts and circumstances if any order is passed by the Court the same will not have faith and confidence of the people in the system of administration of justice. Confidence of the people in the justice system will be eroded in case such types of incidents are allowed to happen in the matters where political leaders are arrested and are to be produced in the Court. Public trust and confidence in the judicial system is more important, it being the last resort. They may have a feeling that it is not rule of law which prevails but it is a mob which has an

upper hand and especially in a case where it is led by the Chief Minister of the State in the office of CBI and by the Law Minister of the State in the Court Complex. If the parties to a litigation believe in Rule of Law such a system is not followed. The idea was different.

In our opinion aforesaid facts are sufficient to take cognizance of the present matter with reference to the request of the learned Solicitor General of India for examination of the issue regarding transfer of the trial. We are not touching the merits of the controversy but the manner in which pressure was sought to be put will not inspire confidence of the people in the rule of law. As during the period when the arguments were heard, the order was passed by the Court below, we deem it appropriate to stay that order and direct that the accused person shall be treated to be in judicial custody till further orders. The authority in whose custody they are kept shall ensure that they have all medical facilities available as are required and they are treated in terms of the provisions of the Jail Manual.

Adjourned to 19th May, 2021.

Rajesh Bindal, CJ(A)

Arijit Banerjee, J.