

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

CRL.MP. NO. _____/2019

IN

WRIT PETITION (CRIMINAL) No.146 OF 2019

IN THE MATTER OF:-

Rajib Sharma

...Petitioner

Versus

State of West Bengal and Ors.

... Respondents

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FILED BY:

AMIT AGRAWAL

ADVOCATE FOR THE PETITIONER

FILED ON: 15.05.2019

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
CRL.MP. NO. _____/2019

IN

WRIT PETITION (CRIMINAL) No.146 OF 2019
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

IN THE MATTER OF:-

Rajib Sharma

...Petitioner

Versus

State of West Bengal and Ors.

... Respondents

APPLICATION SEEKING DIRECTIONS

TO,

HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVEMENTIONED:

MOST RESPECTFULLY SHEWETH:

1. Petitioner herein has filed the captioned writ petition seeking various reliefs which is pending adjudication. The facts and circumstances giving rise to the writ petition are set out therein in detail and are not repeated herein for the sake of brevity. The Applicant craves leave of this Hon'ble Court to treat the same as an integral part of the present Application as well. It is the case of the Petitioner that the entire detention / arrest of Detenue Ms. Priyanka Sharma is totally illegal and contrary to all principles of law, both constitutional and procedural, and that the detention / arrest is totally without jurisdiction, and is an absolute illegality.
2. Despite the order of this Hon'ble Court dated 14.05.2019, the Detenue (namely Ms Priyanka Sharma) has still not been released. This Hon'ble Court had categorically directed for her immediate release, and the said order had also received wide media publicity. However, the

Detenue continues to be detained / kept at Alipore Women's Correctional Home (Jail).

3. It is respectfully submitted that pursuant to the order passed by this Hon'ble Court yesterday on 14.05.2019, Alipore Women's Correctional Home was visited by the mother of the Petitioner / Detenue along with Mr Saurabh (well-wisher) and release of the Detenue was sought. Jailor Ms Shakuntala acknowledged that order of this Hon'ble Court dated 14.05.2019 had been received through an email sent by the registry of this Hon'ble Court as well as through an email sent by the undersigned Advocate on Record. Copy of the email communication dated 14.05.2019 by Advocate on Record to Superintendent, Alipore Women's Correctional Home is annexed herewith and marked as Annexure A [Pages 8 to 11]. However, the jailor / Ms Shakuntala stated that the order of the Hon'ble Supreme Court is unclear, and that as a matter of procedure, an endorsement and further order from the concerned judicial magistrate (CJM) would be necessary. Additionally, she also insisted upon being provided with a certified copy of the Order dated 14th May 2019.
4. Ms. Shakuntala was also informed that the certified copy of the Order dated 14th May 2019 was only made available at 5 P.M. and therefore, it would take sometime to bring the same all the way to Kolkata. It is submitted that, in fact, the certified copy of the Order dated 14th May 2019 was sent along with one of the well-wishers of the Detenue who left Delhi via 10 P.M. flight to Kolkata.
5. It was explained to the jail authorities that since the order has been passed by this Hon'ble Court, and also since no lawyer at present is appearing before any court in State of West Bengal in view of the continuing strike, the insistence on any further endorsement / order

being required is completely unjustified. However, the said explanation was not accepted, and the Detenue was not released. Additionally, despite acknowledging the receipt of the order from this Hon'ble Court the jailor insisted on being supplied a physical certified copy of the order of this Hon'ble Court.

6. It is also verily believed that the police authorities had in-fact already completed the investigation in the criminal case instituted against the detenue and had filed a closure report before the concerned magistrate on 13.05.2019. If that is correct, the same would have a material bearing on the present case and would also have had a bearing on the hearing of this present petition on 14.05.2019. Petitioner has learnt about the said fact and filing of document through media reports. A cover page for what is apparently a closure report which has been shared on various social media platforms specifically states that a "mistake of fact" has been committed on part of the investigating authorities. It is requested that the State be called upon to verify the veracity of the said document (which has been made available on various social media platforms) and provide a copy of the closure report to the Petitioner and the Hon'ble Court. True Copy of screenshot of a post on Twitter through which Petitioner learnt about the Closure Report, cover page of the Closure Report along with typed copy along with typed copy is annexed herewith and marked as **Annexure B (Colly) [Pages 12 to 15]**

7. It is further submitted that, if the reports of filing of the closure report by the Respondent Authorities true, then, it not reinforces the Petitioner contention that her arrest and detention in the first place was illegal, and further begs the question as to why the Detenue's custody has

been continued beyond 13th May 2019 notwithstanding the filing of the closure report.

8. It is respectfully prayed that in the event that investigation is complete, and a closure report has been filed by the investigating authorities as stated above, this Hon'ble Court may be pleased to recall its order dated 14.05.2019 to the extent it directed the Detenué to tender an apology. It is respectfully submitted that in view of the fact that the closure report has been filed stating that a mistake of fact has been committed in arresting the Detenué, and that the State has no case worth prosecuting, no apology as such is required to be furnished by the Detenué. This is also without prejudice to the submission that no offence is per se made out or was committed by the Detenué.

9. Also, it is respectfully submitted that it is a gross dereliction on the part of the State to not have brought the above said fact of filing of closure report and completion of the investigation before this Hon'ble Court. The State was duty bound to have brought this fact to the knowledge of the Hon'ble Court on 14.05.2019 itself when the detailed hearing took place on 14.05.2019. Not apprising the Hon'ble Court of the said fact *inter alia* amounts to suppression of facts which cannot be permitted. This document itself has also received wide media attention on the evening of 14.05.2019 through which the Petitioner learnt of the same. Quite aside from the submission of the Petitioner that no offence has been committed, that the question of tendering an apology would itself not have arisen had the Respondents brought to the notice of the Hon'ble Court the fact of the police having filed a closure report. Since, it is verily believed that the investigation has been completed, and also that no offence has been made out as per the investigating agency

itself and also that as per the report there was some kind of "mistake of fact", any apology is not warranted.

PRAYER

10. In view of the facts above stated it is respectfully prayed that this may be pleased to:

- (a) Direct the Jailor of Alipore Women Correction Home toforthwith release of the Detenue (Ms Priyanka Sharma) on the basis of an electronic copy of the orders of this Hon'ble Court without insisting upon of any further procedural formalities, including but not limited to insisting upon an endorsement by the CJM;
- (b) Recall/modify the direction contained in the order dated 14.05.2019 to the extent it directs the Detenue to tender an apology;
- (c) Direct the Respondents to supply copies of FIR / complaint relating to the Cyber Crime PS Case No. 15/19 dated 09.05.2019, the final report in relation thereto, the remand order, and other documents;
- (d) pass any other order or orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the case and in the interests of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

DRAWN BY:
KOTLA HARSHVARDHAN
SATYAJIT SARNA

FILED BY:
AMIT AGRAWAL

ADVOCATE FOR THE PETITIONER

DRAWN ON: 14.05.2019
FILED ON: 15.05.2019

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

CRL.MP. NO. _____/2019

IN

WRIT PETITION (CRL) NO. 146 OF 2019

IN THE MATTER OF: -

Rajib Sharma

...Petitioner

Versus

State of West Bengal and Ors.

...Respondents

AFFIDAVIT

I, Rajib Sharma, S/o Late Shyamal Kumar Sharma, aged about 29 years, residing at North Shanpur, Dasnagar, Biplabi Anadi Das Sarani, Quarter No. 3, Howrah – 711105, Kolkata, West Bengal, presently at New Delhi, do hereby solemnly affirm and state as under:

1. I am the next friend and brother of the Petitioner i.e. Priyanka Sharma the above case and I am competent to depose to the contents of the present affidavit. I state that I am fully aware of the facts and circumstances of the present case.
2. I state that I have read through the contents of the accompanying applications and state that the contents therein are true and correct to the best of my knowledge and belief.
3. I state that the legal submissions in the accompanying applications have been drawn up by the advocate after explaining the same to me.
4. I state that the annexures appended to the applications are true copies of their respective originals.

DEPONENT

VERIFICATION

I, the deponent hereinabove do hereby verify the contents of this Affidavit to be true and correct to the best of my knowledge and belief. I state that no part of this Affidavit is false and nothing material has been omitted therefrom.

Verified before me on this the 15 day of MAY 2019 at

DEPONENT

Annexure A 8

5/14/2019

agrawal chambers Mail - In re immediate release of Ms Priyanka Sharma

Amit Agrawal <amit@agrawalchambers.com>

In re immediate release of Ms Priyanka Sharma

Amit Agrawal <amit@agrawalchambers.com>

Tue, May 14, 2019 at 5:56 PM

To: supdt.awch@gmail.com

Cc: Harshavardhan Kotla <harsha@khrchambers.com>, Satyajit Sarna <satyajit@satyajitsarna.com>

Sir / Ma'am,

Please find attached herewith letter for immediate release of Ms Priyanka Sharma together with copy of order of the Supreme Court passed today in Writ Petition (criminal) 146/2019 .

Best regards,

Amit Agrawal
Advocate on Record

Amit Agrawal
I-11, First Floor, Jangpura Extension,
New Delhi - 110014
Tel 1: 011-41061899
Tel 2: 011-43537698
Mobile: +91 - 9810772783
=====

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 Ms. Priyanka Sharma.pdf
999K

AMIT AGRAWAL
ADVOCATE ON RECORD
SUPREME COURT OF INDIA
B.A. LL.B. (HONS)

I-11, First Floor, Jangpura Extension, New Delhi-110014
Tel. 1 : 011 - 4106 1899
Tel. 2 : 011 - 4353 7698
E: amit@agrawalchambers.com

14.05.2019

To,

Officer-In-charge,
Alipore Women's Correctional Home,
31, Belvedere Road, Block A,
Alipore Police Line,
Alipore, Kolkata – 700 027
West Bengal

Email: supdt.awch@gmail.com

Sub: Release of Ms. Priyanka Sharma pursuant to the Supreme Court order dated 14 May 2019 in W.P.(Crl.) No. 146/2019 titled as Rajib Shara v. State of West Bengal and Others

Dear Sir / Ma'am,

I am the advocate on record, acting and pleading, in the captioned case (filed by Mr. Rajib Sharma, being brother of Ms Priyanka Sharma) before the Hon'ble Supreme Court.


Ms. Priyanka Sharma d/o Late Sh Shyamal Kumar Sharma, it is informed, is in custody at the above mentioned correctional home / jail. She was arrested in connection with Kolkata Cyber Crime PS Case No. 15/19 dated 09 May 2019.

Vide order dated 14.05.2019 in the captioned writ petition, the Hon'ble Supreme Court has directed immediate release of Ms. Priyanka Sharma.

A copy of order dated 14.05.2019 in W.P.(Crl.) No. 146/2019 passed by the Hon'ble Supreme Court is enclosed along with this letter.

Kindly take note of the same.

Yours sincerely,


AMIT AGRAWAL
Advocate on Record
AOR Code: 2470

Enclosed:

1. Order dated 14.05.2019 in W.P.(Crl.) No. 146/2019 titled as Rajib Sharma v. State of West Bengal and Others delivered by the Supreme Court of India.

ITEM NO.5

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

775876

Writ Petition(s)(Criminal) No(s). 146/2019

RAJIB SHARMA

Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

Date : 14-05-2019 These matters were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE SANJIV KHANNA

Certified to be true copy

Rajm Khan

Assistant Registrar(Judl.)

For Petitioner(s) Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Rajshekhar Rao, Adv.
Mr. Kotla Harshvardhan, Adv.
Mr. Satyajit Sarna, Adv.
Mr. Amit Agrawal, AOR
Ms. Aanchal Tikmani, Adv.
Ms. Chanan Parwani, Adv.
Mr. Sahil Raveen, Adv.
Mr. Rahul Kukreja, Adv.
Mr. Kshitij Maheshwari, Adv.

14/5/2019
SUPREME COURT OF INDIA

For Respondent(s) Mr. Suhaan Mukerji, Adv.
Mr. Ravinder Singh, Adv.
Ms. Astha Sharma, Adv.
Mr. Amit Verma, Adv.
Mr. Abhishek Manchanda, Adv.
Mr. Prastut D., Adv.
Ms. Rayeesha Gupta, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The detinue, Priyanka Sharma, is directed to be immediately released on bail. The detinue shall, however, at the time of release, tender an apology in writing for putting up/sharing the pictures complained of on her Face Book Account.

Signature valid
Date: 14/05/2019
Reason:

It is made clear that this order is being made in the special

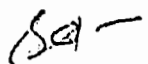
facts and circumstances of this case and shall not operate as a precedent.

The questions raised are kept open.

Ms. Astha Sharma, learned counsel appearing for the State of West Bengal accepts notice. Let a copy of the writ petition be served on the learned counsel for the State. Writ petition be listed after the vacation.

Order be given dasti.


(GULSHAN KUMAR ARORA)
COURT MASTER


(RAJ RANI NEGI)
ASSISTANT REGISTRAR

TRUE COPY



Utkarsh Anand
@utkarsh_aanand

Closure report filed by the police in
#MamataBanerjee -meme case:
Essentially it means the #WestBengal
police think it has no case against
#PriyankaSharma & want to close it.
But #SupremeCourt orders her to give
an apology in writing for the "hurt" she
caused.
Law? #Constitution?

CASE DOCKET CIVILIAN

In
The Court of Chief Judicial Magistrate
Sadar Court, Howrah.

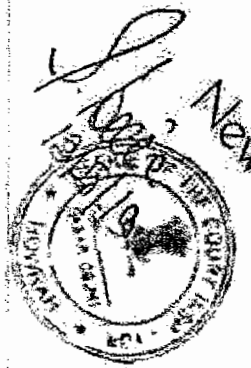
News18

Through GPO, Howrah Sadar Court



Ref: Cyber Crime PS Case No- 13/19 Dt. 09.05.19 DTG 500 LMG & 106/07A 13744, 2000.

Sir,
In the above reference I am depositing the original case docket containing page no. 01 to 39
including Cyber Crime PS Form (Mamata of File) No: 11/19 dated: 13.05.19 DTG 500 LMG &
66/07A 13744, 2000) after completion of its investigation.
Kindly acknowledge the receipt and charge.



Yours faithfully
[Signature]
(Inspr) Smt. K. Mukherjee
Cyber Crime Police Station
Howrah Police Commissionerate
Date: 13.05.19
Inspector of Police
Cyber Crime PS,

CASE DOCKET CHALLAN



In
The Court of Chief Judicial Magistrate
Sadar Court Howrah

Through GRO, Howrah Sadar Court

Ref: Cyber Crime PS Case No- 15/19 DL 09.05.19 U/S 500 IPC & 66/67A I.T act, 2000.

Sir,

In c/w above reference I am depositing the original case docket containing page no: 01 to 39 including Cyber Crime PS FRMF (Mistake of Fact) No: 11/19 dated: 13.05.19 U/S 500 IPC & 66/67A I.T act, 2000 after completion of its investigation.

Kindly acknowledge the same and oblige.



Yours faithfully

(Insp. Sisir Kr. Naskar)
Cyber Crime Police Station
Howrah Police Commissionerate
Date: 13.05.19
Inspector of Police
Cyber Crime P.S.
Howrah City Police



UtkarshAnand
@utkarsh_aanand

Closure report filed by the police in #MamataBanerjee-meme case:
Essentially it means the #WestBengal police think it has no case
against #PriyankaSharma & want to close it. But #SupremeCourt orders
her to give an apology in writing for the "hurt" she caused.

Law? #Constitution?

CASE DOCKET CHALLAN

In
The Court of Chief Judicial Magistrate
Sadar Court Howrah

Through GRO, Howrah Sadar Court

Ref: Cyber Crime PS Case No- 15/19 Dt. 09.05.19 U/S 500 IPC &
66/67A I.T. Act, 2000

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FRMF (Mistake of Fact) No: 11/19 dated 13.05.19 U/S 500 IPC &
66/67A I.T. act 2000 after completion of its investigation.

Kindly acknowledge the same and oblige.

Yours faithfully
(Signed)
(Insp. Sisir Kr. Naskar)
Cyber Crime Police Station
Howrah Police Commissionerate
Date: 13.05.19
Inspector of Police
Cyber Crime P.S.
Howrah City Police

Signed
13/5/19
[Seal]

CASE DOCKET CHALLAN

In
The Court of Chief Judicial Magistrate
Sadar Court Howrah

Through GRO, Howrah Sadar Court

Ref: Cyber Crime PS Case No- 15/19 Dt. 09.05.19 U/S 500 IPC &
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Kindly acknowledge the same and oblige.

Yours faithfully
(Signed)
(Insp. Sisir Kr. Naskar)
Cyber Crime Police Station
Howrah Police Commissionerate
Date: 13.05.19
Inspector of Police
Cyber Crime P.S.
Howrah City Police

Signed
13/5/19
[Seal]

TRUE COPY