
(2021) 06 CAL CK 0038

In the Calcutta High Court

Case No : CAN No. 1, 2, 3, 4, 5, 6, 7 Of 2021 In Writ Petition No. 10504 Of 2021

CBI ACB Kolkata

APPELLANT

Vs

Firhad Hakim @ Bobby Hakim And Ors.

RESPONDENT

Date of Decision : 09-06-2021

Acts Referred:

Calcutta High Court Appellate Side Rules, — Rule 38

Citation : (2021) 06 CAL CK 0038

Hon'ble Judges : Rajesh Bindal, J;I.P. Mukerji, J;Harish Tandon, J;Soumen Sen, J;Arijit Banerjee, J

Bench : Full Bench

Advocate : Tushar Mehta, Y.J. Dastoor, S.V. Raju, Phiroze Edulji, Kanu Agarwal, Samrat Goswami, Dr. Abhishek Manu Singhvi, Siddhartha Luthra, Debanjan Mandal, Sandip Dasgupta, Suhaan Mukherji, Kunal Vajani, Amit Bhandhari, Gopal Chandra Halder, Ajay Agarwal, Pankaj Singhal, Shubhangni Jain, Chitralkha Das, Mahima Cholera

Judgement

1. Before Dr. Abhishek Manu Singhvi, learned Senior Counsel, commenced his arguments, Mr. Rakesh Dwivedi, learned Senior Counsel made a request that affidavit-in-opposition being filed by him on behalf of the respondent Nos. 6 and 7, Chief Minister and the Law Minister, respectively be taken on record. To this Mr. Tushar Mehta, learned Solicitor General of India raised strong objection. He submitted that there was ample opportunity available with the respondents to whom Mr. Rakesh Dwivedi, learned Senior Counsel is representing to file their affidavits-in-opposition, however, they Â Â maintained a calculated silence. Initially, Mr. Kishore Datta, learned Advocate General along with Mr. Abhratosh Majumder, learned Additional Advocate General and Mr. Sayan Sinha, Advocate had put in appearance for them. Thereafter, they are represented by Mr. Rakesh

Dwivedi, learned Senior Counsel. At no stage, they sought time for filing affidavit-in-opposition. He had already concluded his argument and even Dr.

Abhishek Manu Singhvi, learned Senior Counsel appearing for one of the accused is also nearing completion of his arguments. At this stage, filing of

an affidavit is nothing else but an attempt to fill up the lacunae. It has been strenuously argued by him that none of the allegations made by the CBI in

its pleadings have been controverted by the persons impleaded therein. He further submitted that when hearing of the case commenced, none of the

Counsels representing the State or respondent Nos. 6 and 7 sought time to file their affidavits. This is despite the fact that accused who were in

custody filed applications. When the hearing is nearly at the stage of conclusion no pleading should be taken on record.

2. As we had not taken even the belated affidavit sought to be filed by the state on record, as is recorded in the order dated June 07, 2021, Mr.

Kishore Datta, learned Advocate General also raised an issue and prayed that even the affidavit filed by the State be also taken on record. He

referred to Rule 38 of the Appellate Side Rules of High Court, Calcutta which provides that four weeks time is to be granted for filing affidavits. He

further submitted that the arguments in the matter are still continuing and whatever is mentioned by the State in its affidavit, the same can be taken

care of by Mr. Tushar Mehta, Solicitor General of India in his arguments in rebuttal. Mr. Kishore Datta, learned Advocate General further submitted

that hearing of the matter was not objected to as it required urgent consideration. However, once certain factual aspects have been pleaded, the same

need response from the State. Hence, the affidavit of the State be also taken on record.

3. Mr. Rakesh Dwivedi, learned Senior Counsel submitted that reasonable time was not afforded to his clients to file the affidavit. In the larger interest of justice, the matter can be heard afresh.

4. After hearing learned Counsel for the parties, we find that on account of extraordinary circumstances explained by the learned Additional Solicitor

General of India, this Court had taken cognizance of the email sent by the CBI. The matter was taken up for hearing on May 17, 2021 by a Division

Bench. The order passed by the learned Special Judge, CBI Court was stayed. The accused were directed to be kept in judicial custody. The State

was represented by the learned Advocate General. Thereafter, the matter was taken up for hearing on May 19, 2021 when the arguments of the

learned Counsel for the parties including the accused and the learned Advocate General were heard. Vide order dated May 19, 2021, the Division

Bench of this Court in the presence of the learned Counsel for the parties including the learned Advocate General modified the order passed by this

Court on May 17, 2021 and directed that the accused shall be kept under house arrest. The matter was referred to be heard by a Larger Bench. At

that stage, as well the State was represented by the learned Advocate General.

5. On May 24, 2021, hearing before the Larger Bench consisting of five Judges commenced. It continued on May 27, 2021. Arguments of learned

Solicitor General of India were noticed that keeping in view the position, the respondent Nos. 6 to 8 are holding, CBI had not served advance copies of

the paper book to them. This Court directed that the copies of the petition be served upon respondent Nos. 5 to 8. At that stage, Mr. Abhratosh

Majumder, Additional Advocate General accepted notices on behalf of respondent Nos. 6 to

8. On that day request made by the learned Counsel for the accused was accepted that argument in the application filed by them for recalling of the

order, staying the order granting bail to them be heard first. The matter was directed to be taken up for hearing on May 28, 2021. On that day, after

hearing learned Counsel for the parties, this Court granted interim bail to the accused. Matter was directed to be taken up for further hearing on merits

on May 31, 2021. On that day neither the learned Advocate General nor the learned Counsel who appeared for respondent Nos. 6 to 8 made any

request for grant of time for filing their affidavits. The order dated May 31, 2021 records that at the commencement of hearing, learned Advocate

General sought to raise preliminary objection regarding maintainability of the present proceeding and constitution of a Larger Bench. Even at that

stage, there was no prayer made by him for grant of time for filing affidavit-in-opposition. He wanted to address arguments without filing any affidavit.

On that day, the respondent Nos. 6 and 7 were also represented by Mr. Rakesh Dwivedi, Senior Advocate with Mr. Eklavya Dwivedi, Advocate. No

request was made for grant of time to file affidavit in opposition. The arguments of Mr. Tushar Mehta, learned Solicitor General of India were heard-

in-part. The matter was adjourned to June 1, 2021.

6. The arguments of the learned Solicitor General of India continued from June 1 to 3, 2021. No request was made either by the learned Advocate

General or the learned Counsel representing the respondent Nos. 6 and 7 for grant of time for filing their affidavits-in-opposition.

7. After Mr. Tushar Mehta, learned Solicitor General of India concluded his arguments on June 03, 2021. Mr. Kishore Datta, learned Advocate

General sought to address the Court first. However, Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing for one of the accused, sought

precedence. He commenced his arguments. It shows that even at this stage, the learned Advocate General was ready to address the Court, with no

affidavit by the State on record. He wished to address arguments only with reference to the material already on record. Arguments of Dr. Abhishek

Manu Singhvi, learned Senior Counsel, continued on June 3, 2021 and thereafter on June 7, 2021. On that day, when the Bench was to rise for lunch

break, learned Advocate General made a request that affidavit sought to be filed by the State in response to the allegations made by the CBI be taken

on record. To this, Mr. Tushar Mehta, learned Solicitor General of India raised serious objection. Even the learned Counsel appearing for the accused

also supported the prayer made by the learned Advocate General for taking the affidavit filed by the State on record. The prayer of the learned

Advocate General for taking the affidavit on record, was not accepted, however, the issue was not finally closed.

8. Arguments of Dr. Abhishek Manu Singhvi, learned Senior Counsel continued on June 7 and 8, 2021. The matter was adjourned till today.

9. At the commencement of hearing today, Mr. Rakesh Dwivedi, learned Senior Counsel prayed that the affidavit-in-opposition sought to be filed by

respondent Nos. 6 and 7 be taken on record. To this, Mr. Tushar Mehta, learned Solicitor General of India had raised serious objection. We find merit

in the objection raised by him. It is a case in which hearing of the case before the Larger Bench commenced on May 24, 2021 and after the

conclusion of the argument by the learned Solicitor General of India, the State had sought to file its response when arguments being addressed by Dr.

Abhishek Manu Singhvi, learned Senior Counsel representing one of the accused, were nearing conclusion. Affidavit is sought to be filed by

respondent Nos. 6 and 7, even thereafter. During the course of arguments, Mr. Tushar Mehta, learned Solicitor General of India had raised the issue

that the allegations made by the CBI in its pleadings regarding the events which took place inside and outside the CBI office and the court, have

neither been denied by the State nor by respondent Nos. 6 and 7. Any comment thereon by the accused, who were in custody and not privy to the

allegations, will not be relevant. Not only this, with the conclusion of arguments by Dr Abhishek Manu Singhvi, learned Senior Counsel representing

one of the accused, in fact substantial arguments in the matter have been addressed. Even the court has also put questions and made certain

observations during the course of arguments. At different stages, learned Counsel appearing for the State and respondent Nos. 6 and 7 had good

opportunity to either file their affidavit as is sought to be done now or prayed to the Court for grant of time for filing of affidavit. But it was not done.

They have waited for the arguments in the case to be substantially completed before seeking to place on record their pleadings in response. It is

nothing else but filling the lacunae or supporting the accused. That is why, even the learned Counsels appearing for the accused are also supporting

the prayer made by the State for taking these belated affidavits on record. If any pleadings are taken on record now after the arguments are at the

verge of conclusion, that would be putting the cart before the horse and indefinitely delay the proceedings. Any pleadings are to be filed before the

hearing commences or at the most immediately after it commences and not towards the end of it. The respondents concerned have taken a calculated

risk in not filing their affidavits at the right time, hence, now they cannot be allowed to do so at their own whims and fancies, whenever they wish to

do the same. Urgency of the matter could be appreciated on behalf of the accused, who were in custody but it cannot apparently be on behalf of the

State, hence, if the State or other persons impleaded by the CBI wanted to file their response, time could have been sought at that time and not when

the arguments are at an advanced stage. Other parties only had to respond to certain factual assertions made in the pleadings by the CBI.

10. For the reasons mentioned above, we do not find that the prayer made by either the learned Advocate General or Mr. Rakesh Dwivedi, learned

Senior Counsel for taking the affidavits-in-opposition on record can be accepted. Hence, we decline the same.

11. The arguments of Dr. Abhishek Manu Singhvi, learned Senior Counsel were concluded
12. To come up for further arguments on behalf of other accused on June 10, 2021.
13. To be taken up at 11:30 A.M.