

ARINDAM SINHA
JUDGE



Dated ..24..05..2021.....

Hon'ble Judges,

Our High Court in dealing with WPA 10504 of 2021 (CBI ACB Kolkata vs Shri Firhad Hakim @ Bobby Hakim & Ors.) is cause for me to put pen to paper.

The Appellate Side Rules require a motion seeking transfer, either on the civil or criminal side, to be heard by a single Judge. However, the first Division Bench took up the matter treating it to be a writ petition. The application, if the communication made on 17th May, 2021 can be considered as one, is by the Investigating Agency/Prosecution against accused persons. It could not and was not treated as a Public Interest Litigation. Even a writ petition under article 228 of the Constitution should have gone to the learned single Judge having determination. The communication could not have been treated as such a writ petition simply because no substantial question of law as to interpretation of the Constitution has been raised, as not recorded in order dated 17th May, 2021 nor the subsequently filed application. The mob factor may be a ground on merits, for adjudication of the motion, but could the first Division Bench have taken it up and continue to hear it as a writ petition, is the first question?

By operation of interim order dated 17th May, 2021, the accused persons continued to be in custody (jail) though they had obtained bail from designated Court. On that day when, on intervention of the High Court, said persons were deprived liberty, there was no application on the record of this Court, since the communication was not supported by affidavit, mandated by sub-section(3) in section 407, Code of Criminal Procedure, 1973. Whether the High Court exercising power in the matter of transfer of a criminal case, at that stage on its own initiative, could have passed the order of stay, is the second question? Sub-section (6) under section 407 is the only provision for issuance of order of stay. It must be on the application for transfer.

On 18th May, 2021, there was notice issued that due to unavoidable circumstances the first Division Bench would not assemble that day. This was a period, post summer vacation, when procedure followed required empowering another Division Bench with temporary determination of the Bench, not available. The public were presented with the situation of the High Court having interfered with the liberty of their elected representatives and then, it would not be available for that day to adjudicate on the question of their liberty.

On 19th May, 2021, members of the first Division Bench passed separate orders expressing their divergent views. It appears, the presiding learned Judge's view followed view expressed by the junior learned Judge. While the first view was grant of interim bail, view of the presiding learned Judge prevailed, as an



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interim measure, to become order dated 21st May, 2021. Inter alia, the first Division Bench found it proper for the matter to be heard by a larger Bench. By notification dated 21st May, 2021, five Judges' Bench was constituted by the Acting Chief Justice. When the Judges in a Division Bench differ on any point(s) or issue(s) same is referred to a third learned Judge for opinion. In the premises rule 1 in Chapter II of the Appellate Side Rules do not apply. Chapter VII provides for references to a Full Bench. Such references arise when view taken by a Division Bench is inconsistent with view taken by another Division Bench.

The High Court must get its act together. Our conduct is unbecoming of the majesty the High Court commands. We have been reduced to a mockery. As such I am requesting all of us to salvage the situation by taking such steps, including convening a Full Court, if necessary, for the purpose of re-affirming sanctity of our Rules and our unwritten code of conduct. It should include consideration as to whether by citing the COVID, we can stop coming to Court and conduct its business from wherever we are, our Court being a Court of record within the meaning of article 215 of the Constitution. The accompanying question would be as to how we have made the rules of our conditions of service redundant, citing COVID-19.

I once again request consideration.

yours sincerely,

To The Acting Chief Justice
and all the Hon'ble Judges
High Court, Calcutta.