

02.08.2021
Ct. No.13
Sl. No.100
pk/akd

W.P.A. 11778 of 2021 [via video conference]

[Mr. Rakhal Bera @ Rakhal Chandra Bera -Vs- The State of West Bengal & Ors.]

Mr. Biswaroop Bhattacharya,
Mr. Loknath Chatterjee,
Mr. Sukanta Ghosh
... .. for the petitioner

Mr. Kishore Datta .. Ld. Advocate General
Mr. Saswata Gopal Mukherjee, Ld. P. P.
Mr. Anirban Ray, Ld. Govt. Pleader,
Mr. Amitesh Banerjee,
Mr. Rudradipta Nandy,
Ms. Ipsita Banerjee
... .. for the State

The writ petitioner was enlarged on bail in connection with Maniktala P. S. Case No. 28 of 2021 on 23.07.2021 by ACJM, Sealdah.

By an order dated 08.07.2021, WPA 10778 of 2021 challenging propriety of proceedings against the petitioner in FIR No. 28 of 2021 dated 27.02.2021 under Sections 120B/420/467/468/471 of the Indian Penal Code, was admitted. The petitioner was, however, granted liberty to approach the competent court for remedies under the Code of Criminal Procedure. The order was clarified on 22.07.2021. After clarification, the petitioner was enlarged on bail on 26.07.2021.

Prior to being enlarged on bail, G. R. Case No. 1272 of 2021 by the Contai Police Station dated 01.07.2021 was registered against the petitioner, on a similar allegation of promise of job in lieu of money. The petitioner has been arrested immediately thereafter.

The petitioner is stated to have been taken into custody when he was already in custody in connection with the earlier G. R. Case No. 1074 of 2021.

As already averred in WPA 10778 of 2021 it is reiterated that the petitioner is being punished by the ruling dispensation for changing political affiliation and for being close to the present leader of the Opposition by causing to foist false cases against him.

There are, therefore, 5 cases registered against the petitioner as follows:-

1. GR Case No. 1074 of 2017.
2. Contai P.S. Case No. 204 of 2021 dated 09.06.2021
3. GR Case No. 1272 of 2021
4. Contai P.S. Case No. 237 of 2021
5. Manicktala P.S. Case No. 28 of 2021 dated 1st July, 2021

There appears to be a pattern being followed by police in coordination with one another in attempting to keep the petitioner in custody by hook or crook on one pretext or the other and by registering one FIR after the other.

Stay is sought of the investigation in the present G. R. Case No. 1272 of 2021 and injunction has also been sought to restrain the police from conducting further investigation into the matter.

In the order dated 08.07.2021 passed in WPA 10778 of 2021 this Court had directed the State to produce a list of all cases registered against the petitioner. A similar prayer was made in the instant case.

Mr. Anirban Ray, learned Government Pleader and Mr. Saswata Gopal Mukherjee, learned Public Prosecutor have

vehemently opposed the prayers of the petitioner for stay of investigation. Prayer for enlarging the petitioner on bail is also aggressively opposed.

It is submitted that the police had only taken steps in terms of the decision of the Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and others** reported in **(2014) 2 SCC page 1** i.e. to register the FIR upon receipt of complaint. It is also argued that if the petitioner is desirous of bail he should be treated in the same manner as done by this Court in the earlier case in the order dated 08.07.2021. It is also submitted that if the cases are being filed by private persons, the State was only doing his duty. There is no co-relation between three FIRs registered against the petitioner. It is submitted that the Contai police have recovered substantial evidence against the petitioner.

This Court has carefully considered the arguments of the State and the petitioner. Indeed it is true that W. P. A. 10778 of 2021 was admitted finding prima facie case. In the facts available to the Court in the said case, the petitioner was asked to approach the concerned Court and Magistrate for bail which the petitioner has obtained.

In respect of GR Case No. 1272 of 2021, the petitioner is the 9th accused and it is only alleged that the petitioner had orally threatened the complainant with consequences if material was disclosed. Investigation into such charge does not require arrest.

It is also necessary to enquire into whether there was any bail application for the ACJM to have rejected on 19.07.2021. This has been stated in paragraph 42 of the writ petition.

It is also necessary to look into the allegation that the petitioner was not permitted to sign on the Vakalatnama to file the writ petition. The writ petition was filed with leave granted by this Court, without a vakalatnama.

If G. R. Case No. 1272 of 2021 was already filed on 01.07.2021 it is not understood or appreciated as to why the State has chosen not to inform this Court of the same when the earlier writ petition was being heard. The Court's mind is therefore not free from doubt that the complaints being lodged and FIRs registered against the petitioner may not be wholly bona fide.

Considering the repeated attempts by persons to lodge one complaint after the other against the petitioner and in a planned and systematic manner and the repeated arrest after bail in one case or the other, this Court is persuaded to grant interim relief to the petitioner.

Normally a prayer for liberty from custody pending criminal proceedings is required to be made under Section 439 of the Cr. P. C. However, looking at the successive cases against and the repeated arrests of the petitioner, provisions of Article 21 of the Constitution of India are clearly attracted and a Writ Court under Article 226 of the Constitution of India cannot be a silent spectator. A Writ Court is required to intervene even at a suggestion of any plan or attempt to take away the liberty of

a person, with ulterior motive or for doubtful reason. Such cases call for Judicial Scrutiny.

In those circumstances, this Court directs that the petitioner shall be forthwith released from custody.

The petitioner shall co-operate in all and every investigation in all cases that are pending against him.

The State is once again directed to submit a list of all cases pending against the petitioner anywhere in the State.

This Court is also inclined to direct that all police stations in the State may register any FIR against the petitioner but he shall not be arrested without the express leave of this Court.

Let affidavit-in-opposition be filed within a period of four weeks from date. Reply, if any, thereto be filed two weeks thereafter.

Liberty to mention after completion of pleadings.

After the order is dictated, counsel for the State prays for stay of the aforesaid order. Such prayer is considered and refused.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)