

**HIGH COURT OF TRIPURA
AGARTALA**

AB 16 of 2023

Shri Tapash Ghosh And Ors.

---Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Petitioner(s)	: Mr. S. Lodh, Advocate. Mr. K. Roy, Advocate.
For Respondent(s)	: Mr. R. Datta, PP. Mr. S. Ghosh, Addl. PP.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

08.08.2023

This is an application under Section 438 of the Code of Criminal Procedure.

[2] The prosecution case in brief is that on 23.07.2023, Sri Tapan Lodh, introducing himself as President of Tripura Cricket Association (TCA for short) and Sri Jayanta Dey, Joint Secretary of TCA jointly lodged a written complaint before the Officer-in-Charge of West Agartala PS alleging interalia that the Secretary, Vice President, Treasurer etc of TCA had been directed by a resolution dated 20.07.2023 adopted in a Special General Meeting of TCA held on 20.07.2023 convened under Rule 9 of the Memorandum of Association, Rules and Regulation of TCA, to refrain from entering TCA office and from doing official work officiate as stated above until and unless the allegation of financial irregularity is investigated by SIT, for which already a letter has been issued by the President to Secretary Home Department, but the Secretary of TCA in blatant violation of the above resolution is using the official pad of TCA illegally and unauthorized which is against the spirit of the Resolution dated 20.07.2023. The Hon. Secretary, under the present situation has no authority to use the official pad of the TCA. Such an unauthorized taking

out of official pad from the TCA office and use of such pad, which is the sole property of TCA, by the Secretary of TCA with malafide intention, certainly goes to constitute an offence of Theft, criminal breach of trust etc. The Secretary, is exercising colorable exercise of power and is lodging various FIRS by camouflaging himself as de jure Secretary but as stated above he is no more having the colour of his office. The said Secretary is also regularly issuing office notes, press releases etc disseminating fake and wrong information to Press and thereby becoming guilty of spreading wrong information to public to attain some personal agenda. This sort of dissemination of fake and false information to public using the official pad of TCA is leading to disruption of regular important work of TCA and also misleading the society, which in all probability will lead to law and order situation. Moreover, it is seen that the official website and social media accounts of TCA is being unauthorizedly used by some people, being hacked, which is a serious offence.

[3] On receipt of the aforesaid written complaint, Police registered a case vide West Agartala P.S. Case No. 2023 WAG 123, dated 23.07.2023, registered under sections 380,420, 465, 406, 506 and 34 of the Indian Penal Code.

[4] For the purpose of appreciation of the facts and circumstances that have surfaced in the present proceeding, the written complaint and the printed FIR Form in connection with West Agartala PS Case No. 2023 WAG 123, dated 23.07.2023, registered under sections 380,420, 465, 406, 506 and 34 of the Indian Penal Code.

[5] Mr. S. Lodh, learned counsel appearing for the petitioners has submitted before this court that on 22.07.2023 at about 4:00 p.m., the Secretary of were TCA alongwith the Vice-President of TCA and other Apex Council members went to TCA Head office and while they entering into TCA office premise, some anti-social elements being abated by Sri

Tapan Lodh, Sri Jayanta Dey and others, prevented them from entering into the Head Office of TCA, and lastly, they were assaulted by those anti-socials. It may be mentioned herein that prior to going to TCA office, they first approached the Officer-in-Charge of West Agartala PS for providing security, and in furtherance thereof, the Officer-in-Charge deployed some police personnel alongwith them for entering into the TCA office, but in front of the police personnel, they were assaulted and abused with filthy languages, but police did not take any action. Thereafter, the Secretary of TCA lodged a written complaint on 22.07.2023 before the Officer-in-Charge of West Agartala PS narrating the entire incident, and on receipt of the same, police registered a case vide West Agartala PS case no. 2023 WAG 0120, dated 22.07.2023 under Sections 341, 325, 506 and 34 of IPC. Learned counsel for the petitioners further prayed for allowing his petition.

[6] On the contrary, Mr. R. Datta, learned Public Prosecutor has vehemently opposed to dismiss the anticipatory bail application and relied on judgments of the various High Courts of India. [(i) **Pankaj Bansal Vs. State (Govt. of NCT of Delhi) & Ors.** dated 09.06.2023 passed by the Delhi High Court, (ii) **Sri Jerry Paul Vs. State of Karnataka** dated 11.11.2020 passed by the Karnataka High Court, (iii) **Vinod Kumar Vs state of U.P and Anr** dated 06.12.2019 passed by the Allahabad High Court]. Reliance has also been placed on a judgment by the apex court in **State Through Central Bureau of Investigation Vs. Anil Sharma** reported in **1997(7) SCC 187**. This court, by a fair reading of the judgments, has no hesitation to say that the same are not applicable to the facts and circumstances of the present case.

[7] The very complaint dated 23.07.2023, on the strength of which the FIR has been registered, does not indicate any specific offence against the accused person. The complaint also does not indicate with

regard to termination of the Secretary, and other office bearers from their seat in the light of any by-law which is having statutory force of law. The complaint further does not indicate with regard to any specific financial irregularity that is said to have been committed by the so called accused person. The complaint is not supported by any kind of preliminary audit report and also appears to be vague in nature.

[8] To deal with the present case in hand, it is pertinent to extract the relevant portion of the complaint dated 23.07.2023.

I, on an ominous note like to state that the Secretary, Vice President, Treasurer etc. of TCA, had been directed by a resolution dated 20.07.2023, adopted in a Special General Meeting of TCA held on 20.07.2023 convened under Rule 9 of the Memorandum of Association, Rules and Regulation of TCA, to refrain from entering TCA office and from doing official work officiate as state above until and unless the allegation of financial irregularity is investigated by SIT, for which already a letter has been issued by the President to Secretary Home Department, but the Secretary of TCA in blatant violation of the above resolution is using the official pad of TCA illegally and unauthorizedly which is against the spirit of the Resolution dated 20.07.2023. the Hon' Secretary, under the present situation has no authority to use the official pad of the TCA.

[9] A fair reading of the complaint indicates that no cognizance is made out from the complaint. An elected office bearer cannot injunct another elected office bearer from performing his elected position responsibilities, unless he is removed from the seat in accordance with law. The complainant instead of filing complaint with the concerned Police Station, approached to the Home Secretary, State of Tripura against the accused-persons herein. This court feels that some kind of pre-determined action is initiated in filing this complaint.

[10] However, the investigating agency is at liberty to conduct their investigation without being influenced by the observation made this court.

[11] Mr. R. Datta, learned Public Prosecutor has suggested before this court for imposing conditions to which the counsel for the petitioners has agreed. In the present circumstances and reasons stated above, this court grants pre-arrest bail (anticipatory bail) as under:

- (i) The petitioners shall appear on or before 18.08.2023 before the concerned investigating officer and furnish bail bonds of Rs.25,000/- each and with two sureties for like sum and a personal bond for Rs.25,000/- to the satisfaction of the investigating officer.
- (ii) The petitioners herein to make themselves available before the investigating officer as and when the investigating officer on notice would require their presence in the concerned police station.
- (iii) The notice of the investigating officer should specifically indicate the date and time for the accused persons to remain present before the concerned police station.
- (iv) The investigating officer to conduct the investigation between 10am to 5pm on a given date in the concerned police station.
- (v) The investigation officer is permitted to record the statement of the accused persons.
- (vi) It is needless to mention here that the accused persons shall not tamper any evidence or they shall not influence any witnesses in this regard.

[12] With the above observation and direction, the present anticipatory bail application stands allowed to the extent as indicated above.

JUDGE

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