

24.06.2019.
Item No.2
(Rejected)
ab

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

C.R.M. 67 of 2019

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure filed on 01.04.2019 in connection with Darjeeling (Sadar) Police Station Case No. 190/17 dated 04.09.2017 (G. R. Case No. 505 of 2017) for commission of offence punishable under Section 120B of the Indian Penal Code read with Sections 4/5/6 of the Explosives Substances Act and Sections 25(1)/25(1A)/25(1B)/26(3)/35 of the Arms Act;

And

In the matter of : Puran Tamang and others.

... petitioners.

Mr. R. Majumdar,
Mr. M. Mukherjee,
Mr. R. Lama,
Mr. A. Das,
Mr. R. Agarwal.

...For the petitioners.

Mr. Aditi Shankar Chakraborty, ld. APP,
Mr. Arun Kumar Sarkar.

...For the State.

Six persons have joined together in the instant application for bail alleging that they have been falsely implicated in connection with Darjeeling (Sadar) Police Station Case No. 190/17 dated 04.09.2017 (G. R. Case No. 505 of 2017) for commission of offence punishable under Section 120B of the Indian Penal Code read with Sections 4/5/6 of the Explosives Substances Act and Sections 25(1)/25(1A)/25(1B)/26(3)/35 of the Arms Act.

The learned Advocate for the petitioners submits that they have been wrongly prosecuted under the provisions of

Scheduled Act and the investigation cannot be done by the State Police in view of the provisions contained in the National Investigation Act, 2008. It is submitted that the Unlawful Activities (Prevention) Act, 1967 is the Scheduled Act under Section 2(1)(g) thereof and, therefore, can only be investigated by the Special Agency under the said Act.

Our attention is drawn to the provisions contained in Sections 6, 7 and 8 of the said Act for the limited purpose that though the investigation can initially be undertaken by the State Police but the report is required to be forwarded to the State Government, who, in turn, shall forward the same to the Central Government for formation of opinion as to whether any offence is committed under the Scheduled Act and pertains to a schedule offence required to be investigated by an Agency constituted under the said Act.

It is, thus, submitted that once the schedule offences are included, the State Police cannot investigate nor can proceed any further thereupon and it would be unnecessary that the petitioners are languishing in jail. Further submission is advanced that once the charge-sheet has already been submitted, no further custody is necessary. However, learned Advocate for the petitioners are very much vocal that once the principal accused has already been extended immunity from any coercive steps to be taken by the State Police, the petitioners cannot be compelled to remain in custody and should be enlarged on bail.

In turn, learned Advocate for the State submits that there are incriminating materials available in the case diary having unearth against the petitioners and because of their complicity in the offences, which are grievous and serious in nature, there is every probability and possibility of interference in brining the cause to its logical end.

What is unfurled in course of hearing, the charge-sheet, which is filed before the Jurisdiction Magistrate, not only

contains certain materials, which comes under the schedule Act but also under the Indian Penal Code and other Acts.

Our attention is drawn to the case diary produced before this Court and we have perused the First Information Report as well as the statements recorded during the investigation. We have also gone through the seizure list and we do not feel that there is no material available against the petitioners nos. 1, 2 and 3. Furthermore, the explosives were recovered on the disclosure of the petitioner no.1 after being apprehended and even though the other statements made by the said petitioner before the Police Officer may not be conclusive but may be applied to the extent of discovery made on the disclosure of the said petitioner.

We have also seen the materials pertaining to the involvement of the petitioner nos. 2 and 3 and the offending articles seized by the Investigating Officer. So far as it relates to the rest of the petitioners, we do not feel that the materials surfaced during the investigation have no semblance or sanctity of proof and/or truth in it.

The petitioner no.1 is in custody since 2nd November, 2018 and the other petitioners are also apprehended by the Police Authorities in a close proximity of time.

We feel that so far as the plea relating to schedule Act is concerned, the matter is pending before the Supreme Court and it would not be proper and prudent on our part to delve upon the same at this stage. However, we find that the investigating officer while submitting the charge-sheet clearly indicated that so far as the charging sections under the schedule Act is concerned, the same may be included in the charge-sheet after getting due sanction in the form of supplementary charge-sheet.

We, therefore, do not feel that it is a fit case where the petitioners should be enlarged on bail.

The prayer for bail of the petitioners is, thus, rejected.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)

(Harish Tandon, J.)