

25.01.2021
Item No.15
C. No.30.
AJ.

Allowed

C.R.M. 908 of 2021

(via video conferencing)

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Habra Police Station Case No. 590/20 dated 19.11.2020 under Sections 3(I)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 67 of the Information and Technology Act, 2000.

And

In Re : Aloke Kumar Chakraborty
@ Alok Kumar Chakraborty petitioner

Mr. Bikash Ranjan Bhattacharyya,
Mr. Arindam Jana, Samim Ahammed,
Ms. Saloni Bhattacharya.

.....for the petitioner

Mr. Saibal Bapuli, Ld. A.P.P.

....for the State

The petitioner has prayed for bail in connection with Habra P.S. Case No. 590 of 2020 dated 19th November, 2020 under Section 3(I)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 67 of the Information and Technology Act, 2000. The said case is registered as Special Case No.11 of 2020 and presently pending before the learned Additional Sessions Judge, 1st Court at Barasat.

The allegation against the petitioner is that he uploaded a statement against Whatsapp group making some derogatory utterances to the de-facto complainant who happens to be the Principal of a College. The petitioner is also a Lecturer of the

said College. He made the following statements in his Whatsapp group :-

“স্যার, কর্মজীবনে একজন অল্পজ সমাজ থেকে উঠে আসা মানুষকে যিনি তাঁর অধস্তন সহকর্মীদের খোঁজ রাখার চেষ্টা করেন। ভালো থাকুন সুস্থ থাকুন। নমস্কার।”

English translation of the above uploaded statement is as follows :-

Sir,

“We have found amongst us in our service carrer a person rising from a disadvantageous position in the society and who cares for colleagues working under him. I wish him happiness and good health.”

(Reproduced as stated in paragraph 3 of the application for bail.)

It is submitted by Mr. Bikash Ranjan Bhattacharyya, learned Senior Counsel for the petitioner that intentional insult or intimidation with intent to humiliate a Principal of a Scheduled Caste and Scheduled Tribe in any place within public view is a punishable offence under Section 3(I)(x) of the Scheduled Castes or Scheduled Tribes (Prevention of Atrocities) Act, 1989. If the statement of the petitioner uploaded in his Whatsapp is accepted to its verbal meaning, it does not suggest violation of Section 3(I)(r) of the said Act because mentioning a person who rises from a lower strata of society, in the instant case of scheduled caste or scheduled tribe, and becomes a Principal of a College was acclaimed by the petitioner. The statement was not

intended to show intentionally insult to him or intimidate him.

In support of his contention, Mr. Bhattacharyya refers to a decision of the Hon'ble Supreme Court in the case *Hitesh Verma –Vs- State of Uttarakhand & Anr.* reported in (2020)10 Supreme Court Cases 710 paragraphs 10 and 18. In paragraph 18 of the said judgment, it is clearly observed by the Hon'ble Supreme Court that mere assertion of a fact that the de-facto complainant is a person of Scheduled Caste and Scheduled Tribe category is not an offence unless there is an intention to humiliate him for being a member of scheduled caste or scheduled tribe.

In the present case the Whatsapp text goes to suggest that the accused acknowledged the rise of the de-facto complainant to the post of a Principal of a college in spite of being a member of scheduled caste or scheduled tribe.

Learned Public Prosecutor-in-Charge has, on the other hand produced the case diary which I have carefully perused.

I do not prima facie find any ingredient of offence under Section 3(I)(x) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and accordingly, the text message in Whatsapp group being not a text to cause insult or intimidation of the de-facto complainant, the accused prima facie cannot be held to be involved for the offence punishable under Section 67 of the Information and Technology Act, 2000. For the reasons stated above.

The petitioner is enlarged on bail of Rs.20,000/- with two sureties of Rs.,10,000/- each, one of whom must be a local surety to the satisfaction of the Special Judge, Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Barasat, North 24-Parganas with further condition that if on bail, the petitioner will be present on all dates of trial before the learned Special Judge.

Parties are directed to place the server copy of the order before the learned Special Judge, who shall act on the server copy.

The application for bail, being C.R.M. No. 908 of 2021, is, accordingly, allowed.

(Bibek Chaudhuri, J.)