

S/L 5
18.03.2021
Court. No. 16
SB

WPA 7073 of 2021

Sunil Biswas
Vs.
State of West Bengal & Ors.

(Through Video Conference)

Mr. Samrat Chowdhury, Advocate
Mr. Sandip Das, Advocate

...for the Petitioner.

Ms. Sudeshna Mazumder, Advocate

...for the State.

Mr. Sourav Chatterjee, Advocate
Mr. Soumya Nag, Advocate

...for the Respondent no. 4.

Affidavit-of-service filed in Court today, is kept on record.

Mr. Sourav Chatterjee, learned advocate represented the respondent no. 4.

The grievance of the writ petitioner is that in connection of a criminal proceeding being initiated *inter alia* against him for offences *inter alia* under Section 467 read with other relevant provisions of the Indian Penal Code. The writ petitioner previously applied for anticipatory bail before this Court through CRM No. 10239 of 2020. By an order of the Division Bench dated December 11, 2020 such prayer for anticipatory bail was rejected with an observation that custodial interrogation of the petitioner was necessary to unravel the nature and extent of fraud and this was not a fit

case to grant anticipatory bail to the petitioner. It is pertinent to mention that the charges *inter alia* levelled against the petitioner are manufacturing or fabricating the records of court of law.

The writ petitioner then applied for quashing of the First Information Report (FIR) in connection with Kalighat Police Station Case No. 94 of 2020, which was registered as CRR No. 1728 of 2020 before this Court. A co-ordinate bench by its order dated January 27, 2021 had dismissed the said application.

At this juncture, the writ petitioner claims that arising out of the said criminal proceeding he should have been served with a notice under Section 41A of the Criminal Procedure Code, 1973.

Ms. Sudeshna Mazumder, learned State counsel submitted that, the charges as mentioned above are punishable by more than seven years imprisonment and may continue upto life. The petitioner is absconding. The petitioner had a serious role in committing forgery of the records of the court of law. It is submitted that, the petitioner is a retired public servant.

Mr. Sourav Chatterjee, learned counsel appearing for the fourth respondent, who is the de facto complainant, opposed this writ petition and submitted that the petitioner as of right cannot claim a notice under Section 41A of the Cr.P.C. to be served upon him. Inasmuch as, he submitted that, considering the nature and gravity of offence for which

the writ petitioner is being proceeded against, the writ court should not exercise its equitable jurisdiction and discretion in the matter, when the petitioner ultimately has his remedy under the relevant provisions of the criminal law. He further submitted that, the writ petitioner even availed of such remedies available under the criminal law and is trying to test his luck before this writ court.

After hearing the arguments made on behalf of the parties and on perusal of the material before this Court, this Court is of the firm view that claiming a notice under Section 41A of the Cr.P.C. to be served upon one, is not a matter of right. It is the sole discretion of the investigating authority. Inasmuch as, considering the gravity and nature of the charges, this Court is also of the view that no discretion or equitable relief can be exercised in favour of the writ petitioner in this writ petition. Inasmuch as, the petitioner is also absconding and is not cooperating with the proposed investigation, as appears from his conduct.

In view of the above discussion and for the reasons stated above, the present writ petition being WPA No. 7073 of 2021 stands dismissed and the petitioner shall pay costs of Rs. 20,000/- to the Legal Aid Services, West Bengal.

(Aniruddha Roy, J.)