

02.09.2021

Court No.30
rpan / 02

C.R.M. 5073 of 2020

With

CRAN No. 2 of 2020

In re: **Tapan Bhowal & Ors.**

- Petitioners

and

CRAN No. 3 of 2021

In re: **Nishes Ghosh**

- Applicant

/De Facto Complainant

Mr. Uday Sankar Chattopadhyay,
Mr. Satadru Lahiri,
Mr. Santanu Maji,
Ms. Snigdha Saha
Mr. Pronay Basak

...for the Petitioners.

Mr. S.G. Mukherjee, Id. P.P.,
Mr. Swapan Banerjee,
Mr. Madhusudan Sur,
Mr. Sudip Ghosh,
Mr. Dipankar Paramanick

...for the State

Mr. Abhishek Halder,
Ms. Pramiti Bandopadhyay (through v.c.),
Mr. Avik Ghatak

... for the *De facto* Complainant &
Applicant in CRAN 3 of 2021.

The present application, being CRM 5073 of 2020, has been preferred under Section 438 of the Code of Criminal Procedure in connection with Mogra Police Station Case No. 136 of 2020 dated 24.05.2020 under Sections 420/406 of the Indian Penal Code, 1860.

During pendency of the present application, the petitioner nos.1 and 2 were arrested and as such, the application, so far as the said petitioners were concerned, was dismissed as infructuous by an order dated 17th August, 2020. In respect of the other

petitioners, being the petitioner nos.3 to 6, an interim protection was granted with a direction that the said petitioners should cooperate with investigation and the petitioner no.3 should meet the investigating officer once in a week until further orders and submit necessary explanation with regard to the alleged defalcation. It was also directed that the petitioner no.3 should not enter the jurisdiction of Mogra Police Station, except for the purpose of investigation until further orders.

Subsequent thereto, the petitioner no.3 filed an application, being CRAN 2 of 2020, praying for waiver of the condition restricting his movement so that he may sign cheques for the purpose of disbursal of salaries of the employees of Bandel Elite Academy [in short, the said college]. The said application along with the main application was again heard on 22nd December, 2020 and a coordinate bench of this court passed an order observing *inter alia* as follows :

‘Petitioner no.3 may be permitted to enter the college premises after due notice to the investigating officer and shall in presence of the investigating officer disburse salaries to employees. Save as aforesaid, condition imposed on petitioner no.3 not to enter Mogra Police Station shall continue.’

Mr. Chattopadhyay, learned advocate appearing for the petitioner nos.3 to 6 submits that pursuant to the order dated 22nd December, 2020, the petitioner no.3 served a notice upon the investigating officer and he was permitted to enter the college premises but due to non-cooperation of some of the officials of the

said college, he could not sign the cheques for disbursement of salaries.

He further submits that the petitioners have been falsely implicated and the allegations levelled against them are unfounded. They have duly complied with the conditions as incorporated in the orders dated 17th August, 2020 and 22nd December, 2020. There is no adverse report against them. In view thereof, custodial interrogation of the petitioners is not necessary.

Mr. Halder, learned advocate appearing for the *de facto* complainant opposes the prayer of the petitioner nos.3 to 6 and submits that there are materials on record which clearly reveal their direct involvement in the alleged offence and in view of such complicity, the petitioner nos.3 to 6 are not entitled to the relief, as prayed for.

Mr. Sur, learned Additional Public Prosecutor appearing for the State submits that the investigation is still continuing and no charge sheet has yet been filed. The petitioner nos. 3 to 6 have complied with the conditions, as incorporated in the order dated 17th August, 2020. A report submitted by the Investigating Officer of the case, is already on record.

The parties inform this Court that during pendency of the present anticipatory bail application, a writ petition was preferred by the petitioner no.3 and others challenging a memo dated 19th January, 2021 issued by the Joint Secretary, Department of Industry, Commerce & Enterprises, Press & Societies Branch regarding the affairs of the said college. In the said writ petition

an order has been passed on 1st September, 2021 directing *inter alia* that the concerned bank shall make direct payment to the employees of the said college and the other authorities. In view thereof, there is no further requirement at present towards signing of cheques by the petitioner no.3 and the other Directors of the said college. Let the order dated 1st September, 2021, as produced, be kept on record.

The petitioner nos. 3 to 6 have enjoyed an interim protection since 17th August, 2020. There is no adverse report against them and they have complied with the conditions, as incorporated in the order dated 17th August, 2020. In view thereof, we are of the opinion that their custodial interrogation is not warranted in the facts and circumstances of the case.

Accordingly, we allow this application and direct that in the event of arrest the petitioner nos. 3, 4, 5 and 6, namely, **Tapan Bhowal, Tumpa Bhowal, Soma Bhowal @ Soma Bhawal and Tanushri Bhowal** respectively shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like amount each, one of whom must be a local to the satisfaction of the Arresting Officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973.

The petitioner nos. 3 to 6 shall cooperate with investigation and the petitioner no.3 shall meet with the Investigating Officer of the case once a week on and from 14th September, 2021 until further orders and submit necessary explanation with regard to the alleged defalcation. The petitioner no.3 shall also not enter

the jurisdiction of the Mogra Police Station, save and except for the purpose of meeting with the Investigation Officer, until further orders.

The application for anticipatory bail, being CRM No. 5073 of 2020 and the connected applications are, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Rabindranath Samanta, J.) (Tapabrata Chakraborty, J.)