

11.03.2021.
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as
(Rejected)

C.R.M. 10988 of 2020

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Garhbeta P.S. Case No.204 of 2019 dated 13.05.2019 under Sections 341/354/323/324/325/307/379/427/306/34 of the Indian Penal Code.

In the matter of : Saifuddin Bhunia & Ors.

... Petitioners.

Mr. Siddhartha Sarkar,
Mr. Hirak Roy.

...for the Petitioners.

Mr. Abhra Mukherjee,
Mr. Gautam Banerjee.

.....for the State.

Apprehending arrest in connection with Garhbeta P.S. Case No.204 of 2019 dated 13.05.2019 under Sections 341/354/323/324/325/307/379/427/306/34 of the Indian Penal Code, the petitioners have filed the instant application for anticipatory bail.

It is submitted by the learned Advocate for the petitioners that they have been falsely implicated in connection with the instant case because of their affiliation with the political party. In other words, it is sought to be contended that because of the political rivalry, the petitioners have been implicated in connection with the instant case. It is further submitted that some of the co-accused persons have been granted anticipatory bail by the Sessions Judge and, therefore, petitioners standing

on the same footing should also be treated in the similar manner.

The learned Advocate appearing for the State opposes the prayer for anticipatory bail. It is submitted that the petitioners were directly involved in the instant case and the statement of the eye witnesses as well as the injured would corroborate the same. He, thus, prays for rejection of application for anticipatory bail.

It is really unfortunate that in a democratic polity, the resistance or obstruction are made to the citizens in exercising their constitutional right to vote. The right to vote cannot be undermined and/or denied because of the affiliation with the rival political party. The democracy and free and fair election are inseparable twins and the knot with the umbilical cord is the hallmark of the democracy. The right to vote in democracy is in reality, the active and actual exercise of choice by the citizen of the country for good governance. The constitutional provisions together with established law encapsulate the democratic fabric of the country where the decision of the people prevails. In the words of P. Sadasivam, the former Chief Justice of India, in the case of *Peoples Union for Children Liberties Vs. Union of India*, reported in 2013 (10) SCC page 1, the fundamental right under Article 19(1)(a) read with the statutory right under Section 79(d) of the Representation of the Peoples Act, 1951 is violated unreasonably, if the right to vote is effectively denied. The casting of the vote is the facet of right

to freedom of expression of an individual under the protective umbrella of Article 19(1)(a) of the Constitution of India. The denial or obstruction having caused to exercise the vote not only impinges upon the constitutional right but the statutory right as well; the law should immediately get activated and the perpetrator should be dealt stringently. In *Noor Mohammad Vs. Jetha Anand*, reported in 2013 (5) SCC 202, the Apex Court held that the sacrosanctity of the Rule of Law neither recognizes of a master and/or a slave nor does it conceive of a ruler and a subject but it quintessentiality, encapsulates and sings in glory of the values of liberty, equality and in accordance with law requiring the present generation to have the responsibility to sustain them with all fairness for the posterity ostracising all affections.

The violator of the law should not get an easy walk nor any leniency or sympathy can be attributed to such conduct. It is really a matter of great discourse that the citizen of the country are obstructed in exercising the right to vote which has an impact on the fair and transparent election.

The aforesaid case has been launched against the petitioners alleging that they inflicted grievous injury to several persons standing in the queue to exercise their right to votes which would be evident from the medical report as well as the statement of several persons including the victims annexed with the Case Diary. The statements of the injured as well as the other eye witnesses corroborate such incident and the

complicity of the petitioners thereto can not be ruled out at this stage. Even if the charge sheet has been filed, yet we feel that no privilege should be extended to such errant citizen of the country from being arrested.

Accordingly, the application for anticipatory bail is rejected.

(Harish Tandon, J.)

(Kausik Chanda, J.)