

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 350 of 2022

with

IA NO.: CAN 1 of 2022

(Through Video Conference)

Reserved on : 29.03.2022

Pronounced on: 18.05.2022

Dr. Sumana Mondal

...Appellant

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Sourav Mondal,

Mr. Tanmoy Sett,

Mr. Smartajit Sarkar,

Mr. Abul Kasim Mallik, Advocates

.... for the Appellant

Mr. Amitesh Banerjee,

Ms. Ipsita Banerjee, Advocates

..... for the State

Mr. Kirshore Dutta,

Mr. Rajdeep Mazumder,

Mr. Moyukh Mukherjee,

Mr. Pritam Roy, Advocates

....for the Respondent No. 7

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the Learned Single Judge dated 10.03.2022 passed in W.P.A. No. 4155 of 2022 (Shikha Mukherjee - versus- The State of West Bengal & Ors.) has been questioned by the appellant/respondent no.7 in the writ petition. This appeal is concerned with the order of the said learned Single Judge in a writ petition which challenged the proceedings initiated by the Salboni Police Station in respect of FIR No. 38 of 2022 dated 16.02.2022 under Sections 417/313/506 of the Indian Penal Code.
2. The writ petitioner is the mother of a doctor who is stated to have entered into a relationship with the defacto complainant/appellant herein. The writ petitioner had moved the High Court under Article 226 to challenge unlawful denial of rights under Article 21 of the Constitution since her son could not apply for bail before the Sessions Court. On 22nd February 2022, the day petitioner's son was arrested. The Single Judge on having considered the materials on record, took the view that the petitioner's remedy lied under Section 439 of Cr.P.C and/or Section 482 of Cr.P.C. and enlarged the accused for a period of 10 days to seek bail.
3. Learned Counsel appearing for the appellant/respondent no.7 in the writ petition submits that enlarging the accused on liberty for a period of 10 days in a premature stage of investigation where the allegations upon the accused person are under Sections 417/376/313/506 of the Indian Penal Code will effect the outcome of the investigation.
4. Learned Senior Counsel appearing for the writ petitioner/respondent no.7 in the appeal submits that the accused has already been granted bail by the Lower Court and the relief the appellant can claim is prescribed under Section 482 of the Criminal Procedure Code .
5. We find that the accused was enlarged on liberty only for a period of ten days by the Learned Single Judge on the condition that in case any of the offensive materials found in the devices seized from the petitioner therein, or that any further material relating to the de facto complainant comes out in public in any form or even if found available with any single third person, his liberty would cease and he would be taken back into custody.
6. The Learned Single Judge further directed the petitioner to apply for regular bail under Section 439 of Cr.P.C before the appropriate forum and held that the concerned application should be dealt with on its own merits without any influence of the observations made in the said petition.

7. Moreover, the Learned Single Judge also stated that in case any of the witnesses whose statements were recorded by the Investigating Officer are sought to be influenced by the accused, his liberty would come to an end and he would be taken into custody. The petitioner was directed to cooperate with the investigation in the event of being summoned by the Investigating Officer and hand over her son's laptop/any other device in his custody, as would be required by the Investigating Officer for the purpose of the said investigation. The Learned Single Judge disposed of the writ petition with no order as to costs.

8. In light of the above discussion and as regular bail under Section 439 of the Cr.P.C. has also been granted to the accused, we find no case is made out to interfere in the order of the Learned Single Judge.

9. For the foregoing reasons, the appeal is disposed of. All pending application are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

18.05.2022

PA(BS)