

20.10.2022

Sl. No. 04.
Mithun/
G.S.Das
Ct.No.28.

In the High Court at Calcutta

Vacation Bench

CRM(DB)/3773/2022

In Re: An application under Section 439 of the Code of Criminal Procedure, 1973 in connection with Tamluk Police Station Case No. 828 of 2022 dated 13.09.2022 (corresponding to G.R. Case No. 2744 of 2022) under Sections 143/147/149/186/283/323/353/427/120B of Indian Penal Code, 1860 read with Section 3 of the Prevention of Damage to Public Property Act and read with Section 9 of the West Bengal Maintenance of Public Order Act, along with Section 8B of National Highways Act.

And

In the matter of : **Arun Mallik & Ors..**

...petitioners.

Mr. Rajdeep Mazumder, Adv.
Mr. Pritam Roy
Ms. Shyanti Poddar

...for the petitioners.

Mr. N. Ahmed, Adv.
Ms. Manasi Roy

...for the State.

The accused persons/petitioners were shown arrested on 19th of September, 2022 in connection with Tamluk Police Station Case No. 828 of 2022 dated 13.09.2022 (corresponding to G.R. Case No. 2744 of 2022) under Sections 143/147/149/186/283/323/353/427/120B of Indian Penal Code, 1860 read with Section 3 of the Prevention of Damage to Public Property Act and read with Section 9 of the West Bengal Maintenance of Public Order Act.

For disposal of the instant bail application the following facts are required to be stated in brief.

On 13th of September, 2022 a political party took up an agitation programme in the name and style of "*Nabannya Avhijan*", - the State Headquarter.

In order to prevent any untoward incident, the executive authority imposed order under Section 144 of the Code of Criminal Procedure around the railway station and toll plaza setting up in the National Highways. The petitioners being the supports of the aforesaid political party who took up the said agitation programme were forced to detain at a place near *Sonapota* Toll Plaza (within the Tamruk P.S.).

It is pointed out by Mr. Rajdeep Mazumder, Learned Advocate for the petitioners, that apprehending the police atrocity, one Sukanta Ghosh filed a Public Interest Litigation being WPA (P) 470 of 2022 dated 13th of September, 2022. A Hon'ble Division Bench of this Court presided over by the Hon'ble the Chief Justice passed the following directions *vide* Order No. 13th of September, 2022:

- i) The State authorities will ensure protection of party office of the political party which had organized the rally,
- ii) The State authorities will also ensure that no unnecessary arrest is made and no person is

unnecessarily detained in connection with the rally,

- iii) The Secretary, Department of Home Affairs of the State is directed to submit the report in respect of the alleged incident on or before 19th September, 2022.

Subsequently, the said Hon'ble Division Bench passed another Order dated 27th of September, 2022 in the aforementioned writ petition. The relevant portion of which is reproduced below:

"So far as the issue of arrest in connection with the rally, we had already directed by the order dated 13th September, 2022 that all State authorities will ensure that no unnecessary arrest is made and no person is unnecessarily detained in connection with the rally.

Hence, we expect that State authorities will have due regard to the order already passed by this Court. Otherwise they will run risk of strict action in case of its violation."

It is submitted by Mr. Mazumdar that on the basis of the written complaint submitted by the local Panchayat member on 13th of September, 2022, Tamluk P.S. Case No. 826 of 2022 was registered.

In the said complaint it was alleged that the accused persons assaulted the defacto-complainant and committed the offence of attempt to murder.

A Hon'ble Division Bench of this Court in CRM (DB) 3412 of 2022 granted interim bail on 30th of September, 2022 in favour of the petitioners.

Subsequently, on the basis of a *suo motu* complaint, the accused persons were shown arrested in the instant case. The complaint reveals almost the same allegation as depicted in Tamluk P.S. Case No. 826 of 2022.

It is submitted by Mr. Mazumdar that the accused persons were shown arrested in connection with Tamluk P.S. Case No. 828 of 2022 which is self-explanatory expressing sheer vengeance against the petitioners. Therefore, the petitioners may be released on bail.

Mr. Ahmed, Learned Public Prosecutor on the other hand submits that in view of the directions made by the Hon'ble Division Bench presided over by the Hon'ble the Chief Justice in WPA (P) 470 of 2022, the entire matter is within the jurisdiction of the said Hon'ble Division Bench to decide as to whether the petitioners were unnecessarily arrested or not. If the petitioners were unnecessarily arrested, the proper relief lies in moving the proper application before the Hon'ble Division Bench in WPA(P) 470 of 2022.

Having heard the Learned Counsels for the petitioners and the State and on careful perusal of the entire materials on record, we like to observe at the outset that an order/direction passed in a writ petition cannot take away the jurisdiction of the High Court under Section 439 of the Cr.P.C.

In view of such matter, we entertain the instant application. The complaint submitted by one Mr. Arup Sarkar, I/C. Tamluk P.S. depicts the following allegations:

"We tried to resist them from their illegal activities and warned them again and again, but did not listen to the police party, they became more furious and aggressive. Thereafter at about 11.00 hrs some of the aggressive followers all on a sudden chased one person while the said person protested against the act of damaging the flag and festoon of Hon'ble Chief Minister of West Bengal and assaulted him with fist, blows and hit by flags sticks resultant of which he received severe injury on his person, somehow he was rescued. Warned the assembled mob again from refraining such illegal activities but carried on the same way without listening to the Govt. officials and Police. The assembled followers/supporters and the leaders used criminal force to deter public servants from discharging their lawful duties. Then on duty police party, announced the assemble mob as 'unlawfully assembly' through loud speaker repeatedly and directed them to refrain from their illegal activities and finally dispersed the unlawfully

assembly from the lanes on the NH 41 at about 13:39 hrs, and regularized the vehicular movement.”

On perusal of the relevant paragraph as quoted above, we do not find any allegation in support of the offences under Section 3 of the Prevention of Damage to Public Property Act and read with Section 9 of the West Bengal Maintenance of Public Order Act.

Prima facie, the allegation under the West Bengal Maintenance of Public Order Act cannot stand in view of the specific directions in WPA (P) 470 of 2022 permitting the petitioners to hold a rally on 13th of September, 2022. It was before the Hon’ble Division Bench while taking up the hearing of the WPA(P) 470 of 2022 that the administrative authorities already passed orders under Section 144 of the Cr.P.C. Taking into consideration such circumstance, the Hon’ble Division Bench passed the above mentioned directions.

We also do not find any *prima facie* material under Section 353 of the I.P.C. in the written complaint and other provisions areailable in nature.

Hence, we are inclined to release the petitioners on bail.

The prayer for bail of the petitioners is **Allowed**.

Accordingly, we direct that the petitioners shall be released on bail upon furnishing a bond of Rs. 10,000/- each, with two sureties each of like amount, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Tamluk and with a further condition that the petitioners will submit their residential address and contact numbers before the Court of Learned Chief Judicial Magistrate, Tamluk with bail bond so that their appearances may be procured through the I.O. of the case as and when necessary by the Learned Trial Court. It is also directed that the petitioners will co-operate with the investigation of the case.

The application for bail **CRM (DB) 3773 of 2022** is, accordingly, **disposed of**.

(Biswaroop Chowdhury, J.) (Bibek Chaudhuri, J.)