

16.11.2022.
32.
as
(Allowed)

C.R.M. (DB) 3996 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Burrabazar P. S. Case No.197 of 2022 dated 13.09.2022 under Sections 147/148/149/324/326/353/307/34 of the Indian Penal Code and Sections 3 / 4 of the Prevention of Damage to Public Property Act.

In the matter of : Anup Singh & Anr.

.... Petitioners.

Mr. Rajdeep Mazumder,
Mr. Francis Samson Correa,
Ms. Priyanka Tibrewal,
Ms. Sneha Singh.

...for the Petitioners.

Mr. Swapan Banerjee,
Mr. Suman De.

...for the State.

Petitioners are in custody for over two months. It is submitted they are members of a political party which had organised a rally throughout the State of West Bengal on 13th September, 2022. Police authorities resisted the assembly and a commotion ensued. Petitioners have been falsely implicated in the instant case.

Learned Advocate for the State opposes the prayer for bail. He submits no permission was granted to the rally and the petitioners and co-accuseds resorted to wide spread violence resulting in grievous and life threatening injuries on police personnel. Investigation is in progress.

In reply, learned Advocate for the petitioners submits rally had not been declared unlawful by a Division Bench presided over by the Hon'ble the Chief Justice in WPA (P) 470 of 2022.

We have considered the materials on record. A political rally was organised in the State of West Bengal on 13.9.2022. Police authorities resisted the rally. In a Public Interest Litigation being WPA (P) 470 of 2022, a Division Bench presided over by the Hon'ble the Chief Justice, inter alia, held the members of the political party had a fundamental right to assemble and pursue their democratic activities. However, the aforesaid order, in our estimation, would not justify resorting to violence on members of the police force. Hence, we are unable to accept the submission of the petitioners that the assembly continued to remain lawful even after some of its members had resorted to violence. In this backdrop, it is important to see the nature of activities of the petitioners after some persons assembled at the spot resorted to violence in order to ascertain whether they shared the common object of the unlawful assembly.

To do so, we have gone through the statements of witnesses including the police personnel at the spot. We note that the statements are generic in nature and do not make any specific averment with regard to any overt act of the petitioners. We are not unmindful that mere membership of an unlawful assembly would make all the members liable for any criminal act committed by a member in pursuance of its common object.

It ought not to be lost sight of that the assembly was initially lawful as they had come together at the spot to proceed to the political meeting. Subsequently, when some of its members resolved to violence it turned unlawful. In this conspectus, whether the petitioners were mere bystanders unable to extricate themselves from the mob violence or were conscious members of the unlawful assembly requires to be assessed at the appropriate stage of the proceeding.

They have been in detention for over two months. They do not have any criminal antecedents. Further detention of the petitioners for the purpose of investigation is not necessary and they may be granted bail.

Accordingly, the petitioners 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 local, to the satisfaction of the learned Chief Metropolitan Magistrate, Kolkata subject to condition that they shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioners shall meet the Investigating Officer of Burrabazar police stations once in a week until further order.

In the event the petitioners fail to appear before the Trial Court without any justifiable cause, the trial Court shall be at liberty to cancel their bail in accordance with law without further reference to this Court.

The application for bail is, thus, disposed of.

(Ajay Kumar Gupta,J.)

(Joymalya Bagchi, J.)