

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1707 of 2022

Suresh Chandra Bariki @ Balhi ***Petitioners***
and others

-versus-

State of Odisha and another ***Opposite Parties***

CORAM: JUSTICE S.PUJAHARI

ORDER
08.07.2022

Order
No.

02. 1. This matter is taken up through Hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the F.I.R. registered vide Banpur P.S. Case No.242 of 2022 against which G.R. Case No.2016 of 2022 has been registered in the Court of J.M.F.C., Banpur.
3. Heard learned counsel for the Petitioners and learned counsel for the State-Opposite Party No.1 so also learned counsel for the Informant-Opposite Party No.2.
4. Though it is not disputed that the FIR lodged vide the aforesaid case prima facie discloses the commission of cognizable offences, but the Petitioners have sought for quashment of the same on the ground that the same is false and concocted one and preemptive one to weaken the FIR lodged by the Petitioners-party against some Members of the Banpur Bar Association. It is a case

of the Petitioner No.1 that his nephew Kalandi Rout, who is in jail custody in connection with Banpur P.S. Case No.222 of 2022 lodged at the instance of an Advocate Clerk of Banpur Court, was released on bail, in spite of the fact that none of the Members of Banpur Bar was appearing on behalf of the said accused there. When the same came to the notice to furnish the bail bond and surety as ordered the Petitioner Nos.1 and 2 including the paternal aunt of the said accused visited the Court premises. However, the Members of the Bar in the leadership of the Informant, who happens to be the Vice-President, forced the Court not to release Kalandi Rout on bail from jail custody and also assaulted the aunt of the said Kalandi Rout in the Court premises for which she lodged FIR, which is registered as Banpur P.S. Case No.243 of 2022 and the matter is being investigated but prior to the same in order to frustrate the allegation and make out a defence case as preemptive measure, the FIR against the Petitioners is registered alleging the aforesaid offences. Since the FIR has been lodged being actuated with malice and outcome of concoction, the Petitioners have sought for quashment of the same in exercise of the inherent power of this Court under Section 482 Cr.P.C.

5. During the course of hearing, learned counsel appearing for the Petitioners submits that the Members of the Banpur Bar for reasons best known to them, did not appear for the accused-Kalandi Rout and when the Court released the accused-Kalandi Rout on bail, they did not allow the Petitioners and the relation of the accused-Kalandi Rout to furnish the bail bond to release the accused-Kalandi Rout. When they went to the Court for the said purpose, they manhandled the aunt of the accused-Kalandi Rout

and also forced the Court not to release accused-Kalandi Rout from custody by accepting the bail bond. The Petitioners thereafter when went to the Police Station to lodge the report to frustrate the investigation made in the same, FIR was lodged against the present Petitioners on concocted facts before that as a preemptive measure. In such premises, this Court in exercise of the inherent power must protect the Petitioners by quashing the FIR after hearing the parties and calling for the CCTV footage kept in the Court, which would show that the allegation is nothing but concocted one.

6. However, learned counsel appearing for the State vehemently opposes the prayer for quashment of the FIR and submits that the truthfulness of the allegation is the subject-matter of investigation in the case registered. When FIR allegation discloses a cognizable offence, the Court taking note of the contention as aforesaid by the learned counsel for the Petitioners at this stage may not reach to a conclusion that the allegation is false and concocted and quash the FIR, especially when the Police is investigating into the matter in exercise of the statutory power vested in it under the Code of Criminal Procedure nor should it call for the CCTV footage for the said purpose, submits the learned counsel for the State.

7. Learned counsel appearing for the Informant has also echoed the submission made by the learned counsel for the State. It is vociferously argued by him that the Petitioner No.1 is a person of criminal antecedent and many cases are pending to his credit and he manhandled the lawyers in the Court premises,

which prevent them to discharge their professional duty. Since the FIR allegation discloses a cognizable case, this Court should be loathed in interfering into the matter in exercise of the inherent power under Section 482 Cr.P.C. to quash the FIR.

8. In the rejoinder, however, learned counsel for the Petitioners submits that since some of the Members of the Banpur Bar are involved in the case and they had not allowed the Petitioners to file bail bond as ordered on behalf of the accused-Kalandi Rout for his release by the Court and made false and frivolous allegations which would be apparent from the footage of the CCTV of the Court wherein the same has been captured, therefore, this Court should direct the Court to preserve the CCTV footage of the relevant date immediately and also direct the Police to take note of the same while investigating into the matter and conduct the investigation in an impartial manner. It is further submitted that such illegal action of the Members of the Bar who resorted to boycott of the Court work to strengthen their false case against the Petitioners. In the meanwhile they have got the protection from this Court in a writ petition filed afresh. Furthermore, the CCTV footage be also preserved and the Police be directed to take the same into consideration while investigating into the matter and form an independent opinion on the same. It is also submitted that for such boycott of the Banpur Bar and other Courts in the district, in support of their cause, many accused persons are unable to furnish their bail bonds including accused-Kalandi Rout. Therefore, this Court should also direct the Court concerned to accept the bail bond and take appropriate measures for release of those persons, who are ordered to be released on

bail immediately and also protect the Petitioners from undue harassment in a false case, if the Court is not inclined to quash the FIR and /or interfere with the investigation.

9. On consideration of the facts and the submissions made, even if the learned counsel for the Petitioners vociferously argued before this Court to call for the CCTV footage to fortify their case that the Petitioners have been falsely implicated by filing the aforesaid FIR as preemptive measure to protect them in the police case filed against them by the aunt of accused-Kalandi Rout, who had been to the Court to furnish the bail bond on behalf of accused-Kalandi Rout and they were not allowed to furnish the same, this Court is of the view that the aforesaid is within the domain of the Police while exercising statutory power to investigate the same and as such this Court is not inclined to do so. The Police is investigating into the truth and veracity of the allegation made against the Petitioners. Therefore, this Court is not inclined to quash the FIR examining the CCTV footage for coming to a conclusion the FIR allegations against the Petitioners are false. However, the aforesaid CCTV footage of the relevant date being a valuable piece of evidence, this Court directs the trial Court to preserve the same which may be required by the Police while investigating the case. The Police shall also while investigating into the matter expected to collect the same and verify the same and conduct the investigation in an expeditious and impartial manner and file a report under Section 173 Cr.P.C. as the matter is sensitive one, inasmuch as the same has impacted the functioning of the Court, forming an independent opinion basing on the materials available on record. There is no manner of

doubt that the Court on receipt of such report shall take an independent opinion on the same in the manner known to law. However, if the case registered against the Petitioners is punishable for less than seven years imprisonment and the Police thinks that it is a fit case to extend him the benefit of Section 41-A Cr.P.C., the Police shall consider their case by extending the benefit of Section 41-A Cr.P.C. in view of the law laid down by the apex Court in the case of **Arnesh Kumar vrs. State of Bihar and another** reported in **(2014) 8 SCC 273**. The same however should not be treated as a mandate of this Court as the investigating officer is well aware of the law in this regard in the case of **Arnesh Kumar** (supra) since it has also come to the knowledge of the Court that the lawyers of Banpur Bar have resorted the boycott of the Court work for such incident and many Bar Associations expressing their solidarity with them stated to have also resorted to such abstain from the Court work, this Court hopes and trusts that they would resume the work immediately as the same is not expected from them nor their such action has sanction of law.

10. Be that as it may, if in the meanwhile any of the accused persons released on bail is unable to furnish bail bond for such reason, the Court concerned shall direct them to furnish the P.R. Bond duly attested by the officials of the Jail and release them from custody forthwith with a direction to them to comply with the bail conditions as imposed on a date to be fixed, if the normalcy has been restored in the meanwhile.

11. This order be communicated to the learned Sessions Judge, Khurda who in turn send the same to the Court of learned J.M.F.C., Banpur immediately, so also learned Sessions Judge, Khurda be also intimated to look into the same and if that be so immediately take up the matter with different Presiding Officers in different Courts to see that persons after being released on bail are not deprived of their liberty for not furnishing the bail bond due to non-cooperation of the lawyers and they are released in terms of the directions as aforesaid.

12. With the aforesaid order, this CRLMC stands disposed of.

13. Urgent certified copy of this order be granted on proper application.

14. Free copy of this order be supplied to the learned counsel for the State.

(S.Pujahari)
Judge

DA/PKS