

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 123 of 2023

with

CAN 1 of 2023

CAN 2 of 2023

Reserved on: 31.01.2023

Pronounced on: 06.02.2023

Subhadeep Giri

...Appellant

-Vs-

The State of West Bengal and Others

...Respondents

Present:-

Mr. Kishore Dutta, Sr. Adv.
Mr. Kallol Mondal,
Mr. Srijib Chatterjee,
Mr. Sabyasachi Chatterjee,
Mr. Pritam Roy, Advocates

... for the appellant

Mr. Ashim Kr. Ganguly,
Mr. Bellal Sk., Advocates

... for the State

Mr. Atarup Banerjee,
Mr. Abu Sohel,
Mr. Rajdeep Pramanik,
Mr. S. Nandi, Advocates

... for the respondent no. 6

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

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this intra-court appeal, appellant has challenged orders dated 20th of January, 2023 and 24th of January, 2023 passed in WPA 1613 of 2023.

2. The respondent no. 6 herein (writ petitioner) had filed the petition with the plea that her minor daughter was victim of commission of sexual offence in the hands of the accused, therefore, on the written

complaint, police had registered FIR No. 4 dated 10th of January, 2023 under Section 4 of the Protection of Child from Sexual Offences (Amendment) Act, 2012 and under Sections 34, 376(2)(n) and 506 of the IPC. Being unable to face the agony, she had even tried to commit suicide on 1st of November, 2022 by taking poison. The statement of the victim was recorded under Section 164 of the Cr.P.C.

3. The grievance raised in the petition was that the police authorities, even after registering the FIR and having all the materials, were sitting tight over the issue and were in a mood to hurriedly close the investigation in connivance with the accused persons in view of the fact that the principle accused and his father are highly influential having political background. It was also alleged that the writ petitioner and her husband, i.e., parents of the victim were pressurized and were continuously threatened by the police authorities to withdraw the complaint.

4. Learned Single Judge by the order dated 20th of January, 2023 had recorded the statement of counsel for the accused for surrender of accused and had also noted that the accused to be member of the student wing of a political party and made observation about restriction on granting bail. By the subsequent order dated 24th of January, 2023, contradictory submission of the new counsel for the accused was noted and the submission relating to attack on the house of the writ petitioner by certain hooligans and its ransacking on 22nd of January, 2023 was also taken note of. Hence, a direction was issued to make efforts to arrest the accused Subhadeep Giri as expeditiously as possible.

5. Learned counsel for the appellant submits that there is no prayer in the writ petition for arrest and the appellant was not a party in

the writ petition and the arrest is prerogative of the investigating agency and that statutory right of the appellant to seek bail cannot be curtailed. In support of his submission, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **M.C. Abraham and Another vs. State of Maharashtra and Others** reported in (2003) 2 SCC 649 and in the matter of **Sushila Aggarwal and Others vs. State (NCT of Delhi) and Another** reported in (2020) 5 SCC 1. He further submits that even if the part of the order of the learned Single Judge about alleged undertaking to surrender is correct, then also the appellant has a right to seek bail and he cannot be kept in custody till completion of trial and the order of the learned Single Judge violates Article 21 of the Constitution. He submits that the mobile phone of the accused has already been seized, therefore, there is no possibility of making the video viral.

6. Learned counsel for the State submits that the warrant of arrest against the accused has already been issued. The statement of the victim has been recorded under Section 164 of the Cr.P.C. and that the victim's family is still receiving threat from unknown source.

7. Learned counsel for the private respondent (writ petitioner) has also opposed the appeal by referring to the disclosures made by the victim under Section 164 of the Cr.P.C. and has submitted that after lodging the FIR, the writ petitioner was uprooted from the house and no police help was extended and that accused no. 2 is the Trinamool Congress Block President having political background. He submits that even threats have been received by the advocate appearing for the writ petitioner and that impleadment of the appellant in the writ petition was not necessary because in the writ petition, the grievance was against the

police authorities. He submits that if the appellant has any grievance relating to the undertaking recorded by the learned Single Judge, then proper remedy is to file the review before the learned Single Judge and that statutory right of regular bail has not been curtailed by the impugned order.

8. We have heard the learned counsel for the parties and have perused the record. A copy of the statement of the victim girl recorded under Section 164 of the Cr.P.C. has been produced before this Court which supports the allegation of commission of alleged offence by the accused. Order of the learned Single Judge dated 20th of January, 2023 records the statement of the counsel for the appellant/accused that his client will surrender forthwith and will undergo interrogation. The said part of the order of the learned Single Judge becomes more clear from the subsequent order dated 24th of January, 2023 wherein the learned Single Judge has noted that the new advocate for the accused persons had made contradictory statements. Subsequent order reflects that in the earlier order, the statement of the counsel for the accused Subhadeep Giri was recorded. Hence, in view of the undertaking given before the learned Single Judge, the accused ought to have surrendered but it has been pointed out that the accused has not surrendered till now. If the appellant wishes to contend that no such undertaking was given before the learned Single Judge, then proper remedy available to the appellant is to apply for review/modification/clarification of the order of the learned Single Judge dated 20th of January, 2023. Learned counsel for the appellant has relied upon the judgments of the Hon'ble Supreme Court in the case of **M.C. Abraham and Another (supra)** and **Sushila Aggarwal and Others (supra)**. There is no dispute to the proposition

relating to right to apply for anticipatory bail but after giving an undertaking to surrender before the Court, he cannot claim the benefit of the said judgment.

9. The report in the form of communication filed by the State reveals that till now, the accused persons have not been arrested and the competent Court has issued the warrant of arrest against the two of the accused persons.

10. So far as the observation of the learned Single Judge that the principle accused shall not be enlarged on bail, we are of the opinion that the right to apply for regular bail and to obtain the regular bail in terms of the provisions of the Act from the competent Court cannot be curtailed forever in exercise of the writ jurisdiction.

11. Hence, we dispose of this appeal granting liberty to the appellant to seek review/clarification of the order dated 20th of January, 2023 regarding the undertaking about surrender of the accused. We also make it clear that if the appellant/accused applies for the regular bail, then such a regular bail application will be decided by the competent Court in accordance with law on its own merit without being influenced by the observations made by the learned Single Judge in the order under challenge.

12. The appeal is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
06.02.2023

PA(RB)

(A.F.R. / N.A.F.R.)