

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRM (A) 719 of 2023

Chaitali Tiwari & Ors.

Vs.

The State of West Bengal

For the Petitioners : Mr. Sekhar Kumar Basu, Sr. Adv.
 Mr. Kallol Mondal, Adv.
 Mr. Rajdeep Majumder, Adv.
 Mr. Sourav Chatterjee, Adv.
 Mr. Moyukh Mukherjee, Adv.
 Mr. Shakti Halder, Adv.

For the De-facto : Mr. Mr. Phiroze Edulji, Adv.
 Complainant Mr. Ayan Podder, Adv.

For the State : Mr. S. G. Mukherjee, Ld. P.P
 Mr. Rudradipta Nandy, Adv.
 Mr. Sonkali Das, Adv.

Hearing Concluded on : February 17, 2023
 Judgement on : February 23, 2023

DEBANGSU BASAK, J.:-

- 1.** Petitioners have applied for anticipatory bail.
- 2.** Learned Senior Advocate appearing for the petitioners has submitted that, the petitioner No. 1 is the leader of the Opposition and Councillor of Ward No. 27 of Asansol Municipal Corporation. The petitioner No. 2 was a member of the Legislative Assembly and a former Mayor of Asansol

Municipal Corporation. Both are legal practitioners. Petitioner No. 3 is a Councillor of Asansol Municipal Corporation and the petitioner No. 4 is a political person.

3. Learned Senior Advocate appearing for the petitioner has submitted that, the petitioners are facing the wrath of the ruling regime in the state of West Bengal. He has submitted that, the petitioner No. 1 organised a religious program in which, blanket were being distributed for needy people. The petitioner No. 1 had by a letter intimated the concerned police station regarding such event. The task of obtaining electric connection had been given to one electrician who had assured the petitioners that he would take the necessary permission from the West Bengal State Electricity Distribution Company Limited.

4. Learned Senior Advocate appearing for the petitioners has submitted that, a police complaint was lodged on December 15, 2022 alleging that, on December 14, 2022, in the blanket distribution program the mother of the complainant died due to a stampade. A police case had been registered as against the petitioners.

5. Learned Senior Advocate appearing for the petitioner has submitted that, the petitioner No. 1 had filed a Writ

Petition being WPA 2850 of 2022 praying for squashing of the police case as against the petitioners. He has referred to the order dated December 22, 2022 passed therein. He has submitted that, the first petitioner had been granted protection.

6. Learned Senior Advocate appearing for the petitioners has referred to the subsequent order dated January 18, 2023 passed in the Writ Petition. By such order, the Court had extended the interim measure till the disposal of the application for anticipatory bail. He has also referred to the order dated February 10, 2023 passed by the Writ Court on the interlocutory application filed in the Writ Petition.

7. Learned Senior Advocate appearing for the petitioners has submitted that, as noted in the order dated December 22, 2022 passed by the Writ Court, it is debatable whether Section 304 (II) of the Penal Code would apply to such a case or whether Section 304A of the Indian Penal Code applied. He has submitted that, the petitioners cannot be held liable for any of the offences alleged. The petitioners did not play any role in the incident.

8. In support of his contentions, learned Senior Advocate appearing for the petitioner has relied upon **1996 Supreme**

Court Cases (criminal) 1124 (Keshub Mahindra Vs. State of M.P) and **2019 Volume 14 Supreme Court Cases 676 (Nitinchandra Somnath Raval Vs. State of Gujarat and Others).**

9. Learned Public Prosecutor has opposed the grant of anticipatory bail to the petitioners. He has submitted that, the petitioner No. 1 had filed a Writ Petition in which, she had claimed that she organised the event in which the incident took place. In the incident, 3 persons had died due to a stampede. According to him, the petitioners had been present at the time of the incident and did not do anything to control the crowd. On the contrary, the petitioners had continued with the program of distribution of blankets even after seeing that there was a stampede. He has submitted that, the petitioners did not take prior permission of the police authorities in holding the event. A letter was sent on behalf of the petitioners to the police whereupon, the police had wanted further details from the petitioners. The petitioners did not respond to the request of the police. He has referred to the documents relating to the electricity permission and submitted that, the same has been established to be a forgery.

10. Learned Public Prosecutor has submitted that, prayers for bail of co-accused had been rejected by the Co-ordinate Bench. He has referred to the materials in the Case Diary. He has submitted that, one co-accused had stated that, forged document relating to the electricity was taken by the petitioner No. 1. He has submitted that, the forgery had been discovered on January 17, 2023. Even thereafter, the petitioner No. 1 had relied upon such document. It is only after the rejection of the prayer for anticipatory bail by the Learned Sessions Judge that, the petitioner No. 1 had approached the Writ Court for the purpose of expunging the forged documents related to electricity. He has contended that, the petitioner No. 1 had relied upon a forged document relating to electricity to obtain orders from the Writ Court.

11. Learned public prosecutor has drawn the attention of the Court to the various statements recorded under Section 161 of the Criminal Procedure Code of injured eyewitnesses as well as eyewitnesses to the incident. He has submitted that, such witnesses stated that, there was complete mismanagement at the arena. The petitioners had continued with the distribution of the blankets even after the

commencement of the stampede. All the petitioners had been present at the time of the incident.

12. Learned public prosecutor has submitted that, the seized documents will show that, coupons for about 6,000 blankets had been distributed while, it has come in the Case Diary that, only 3,000 blankets had been purchased. The area at which the event had been held, could not accommodate 6,000 persons. As organizers, therefore, the petitioners had known that the area was not capable of holding an amount of people who were invited to take the blankets. He has referred to the report of a survey with regard to the capacity of the place of occurrence.

13. Learned public prosecutor has submitted that, the petitioner No. 1 did not cooperate with the investigations subsequent to her being afforded the protection by the High Court. He has submitted that, the petitioner No. 1 in her examination which was video recorded, claimed that she did not organise the event and not file the Writ Petition on the basis of which she enjoyed the interim protection of the High Court. She had gone to the extent of denying the engagement of the advocates for the Writ Petition. He has pointed out that, the Writ Petition had been affirmed and verified by the

petitioner No. 2 who is the husband of the petitioner No. 1. Therefore, according to him, the petitioner No. 1 had mis-utilised the liberty grant to her by the High Court in her Writ Petition. She had mis-utilised such a liberty in order to misdirect the investigations, if possible. Therefore, he has submitted that, the prayer for anticipatory bail of the petitioners should be rejected.

14. Learned advocate appearing for the de facto complainant has referred to the orders passed by the High Court from time to time. He has submitted that, the petitioners had relied upon forged documents to obtain favourable orders from the High Court. He has submitted that, the document relating to electric supply was available in the public domain. It was only after the learned Sessions Judge rejecting the prayer for an anticipatory bail that, the petitioner No. 1 had applied for expunging the documents relating to electric supply, relied on, in the Writ Petition.

15. Learned advocate appearing for the de facto complainant has relied upon **2022 SCC Online SC 1529 (Sumitha Pradeep Vs. Arun Kumar C.K. and Another)** in support of the contention that, the gravity of the offence

should be taken into consideration while considering prayer for anticipatory bail.

16. Asansol (North) Police Station had registered a First Information Report bearing No. 557 dated December 15, 2022 under Sections 304 (II)/308/34 of the Indian Penal Code, 1860, on the basis of a written complaint dated December 14, 2022. In the written complaint it had been alleged by the de facto complainant that, the mother of the de facto complainant had attended a blanket distribution event in which, there was a stampede and that, the mother of the de facto complainant had succumbed to the injuries suffered at the event during the stampede.

17. Apparently, 3 persons had died in the incident. The petitioners have applied for anticipatory bail in respect of such police case.

18. Petitioner No. 1 had filed a writ petition being WPA No. 28501 of 2022 inter alia seeking a writ of mandamus for quashing the first information report involved in this proceedings. In such writ petition initially, an order dated December 22, 2022 had been passed. The learned judge had observed that the facts and circumstances of the case, however, appeared to fall short of granting a blanket order of

not to take coercive steps. The learned judge had passed the following directions: –

“(a) Let the investigation of the case continue for the present.

(b) All steps taken during investigation should be video graphed including examination of witnesses and recovery of articles.

(c) The petitioner shall co-operate with the investigation of the case and shall upon 24 hours’ notice given by the Investigating Agency in this regard be present at her residence to be interrogated by the Investigating Officer on the coming Saturday and Monday. Interrogation will not continue for more than 2 hours on each day.

(d) The petitioner shall move an application for anticipatory bail before the appropriate forum within three weeks from the second day of interrogation i.e. 26.12.2022.

(e) Till the application for anticipatory bail of the petitioner is taken up for hearing by a

Competent Court, the Investigating Agency shall not take any coercive steps against the petitioner in connection with the present case.”

19. By an order dated January 18, 2023, the interim protection granted to the petitioner No. 1 by the order dated December 22, 2022 was extended till the application for anticipatory bail of the petitioner No. 1 was not finally decided.

20. Petitioner No. 1 had filed an interlocutory application for expunging documents annexed to the writ petition being CAN 1 of 2023 in the writ petition which was disposed of by an order dated February 10, 2023. The protection against coercive measures to the petitioner No. 1 had been extended for a period of one week from the date of such order. However, the prayer for expunging the documents had been refused.

21. Subsequent to the order dated December 22, 2022 the petitioners along with another person had filed an application for anticipatory bail in respect of the subject police case before the learned Sessions Judge which was registered as Criminal Miscellaneous Case No. 83 of 2023. Such application had been disposed of by an order dated February 3, 2023 refusing to grant anticipatory bail to the petitioners and the other

person who joined the petitioners in the prayer for grant of anticipatory bail.

22. In the present police case, some co-accused who had been arrested, applied for bail by way of CRM (DB) 53 of 2023. In such proceedings, the coordinate bench had noted that, documents annexed to the writ petition did not appear to be genuine. The petition for bail had been dismissed as not pressed by the coordinate bench.

23. The case diary had been produced for our perusal. Apparently, the materials in the case diary have suggested as follows: –

- (i) Police had received a letter on December 3, 2022 intimating holding of a religious program and a program for blanket distribution to be held on December 14, 2022 at a specified place. The applicant had been asked by the police to submit fresh application in proper form containing details with the necessary permissions/no objection certificates from other concerned authorities. The applicant had stated that a fresh application in proper form along with requisite documents would be submitted soon. Police had noted a diary entry with regard thereto on December 3, 2022

- (ii) A blanket distribution program had been held on December 14, 2022 where there was an incident of stampede as a result of which 3 persons had died.
- (iii) Police had received a written complaint on December 15, 2022 with regard to a death occurring at the blanket distribution program which the police had registered as a First Information Report and commenced investigations.
- (iv) During investigations, police had found that, the owner of the property where the program had been held did not give any permission to hold the same.
- (v) Blanket distribution had continued subsequent to the stampede occurring with the petitioners being present at the place of occurrence and not intervening to control the crowd
- (vi) 6,000 coupons had been distributed to the members of the public to enable them to receive blankets at the program for blanket distribution organised by the petitioner No. 1.
- (vii) 3,000 blankets had been purchased for distribution whereas 6,000 coupons had been distributed.
- (viii) West Bengal State Electricity Distribution Company Limited by a letter dated December 19, 2022 intimated the police that no electric permission had been given for the program.

- (ix) The claim of the petitioner No. 1 with regard to the electricity permission had been found by the police to be false and fabricated.
- (x) Petitioner No. 1 had annexed such fabricated document with the writ petition to obtain orders from the writ Court. The writ Court had disallowed the prayer for expunging the fabricated document from the writ petition.
- (xi) Asansol Municipal Corporation had claimed that no permission was obtained from them to hold the program.
- (xii) Apparently, no permission had been obtained for using microphone for the program.
- (xiii) Subsequent to the first order dated December 22, 2022 passed by the writ Court, protecting the petitioner No. 1 from arrest, she had been examined on a number of days by the police. During such examinations, she had given different answers relating to the writ petition and the document relating to the electricity permission. She had gone to the extent of claiming that, the learned advocate drafted the writ petition as per the wish of the learned advocate.
- (xiv) During her examination by the police, petitioner No. 1 had also claimed that she did not organise the program

although, in the writ petition, she had specifically stated that she had organised the program.

24. In ***Keshub Mahindra (supra)*** the Supreme Court has considered the police case at the time of framing of the charges. It was observed that, before any charge under Section 304(II) of the Indian Penal Code, 1860 can be framed, the material on record must at least prima facie show that the accused is guilty of culpable homicide and the act allegedly committed by him must amount to culpable homicide. If the material relied upon for framing such a charge against the accused concerned fall short of even prima facie indicating that the accused had appeared to be guilty of an offence of culpable homicide Section 304 Part I or Part II would get out of the picture.

25. In the facts of the present case, the investigations are yet to be concluded, and therefore obviously, the stage for framing of charges has not arrived and therefore it would be presumptuous to hold that there are no materials with regard to a particular charge.

26. ***Nitinchandra Somnath Raval (supra)*** has been rendered at the time of the police case being at the stage of framing of charges. At that stage, an application had been

filed by an accused claiming that no charge under Section 304 of the Indian Penal Code, 1860 had been made out. The trial Court had accepted such plea and dropped the charge under Section 304 of the Indian Penal Code, 1860. In a revisional application, the High Court had upheld the order of the trial Court. The Supreme Court has held that, in order to invoke Section 304 of the Indian Penal Code, 1860, it has to be established that, the act by which the death was caused was done with the intention of causing death, or of causing such bodily injury as was likely to cause death; or in the alternative, it was done with the knowledge that it was likely to cause death, but without any intention to cause death, or to cause such bodily injury as was likely to cause death. In the facts of that case, the Supreme Court has found that no case for framing a charge under Section 304 of the Indian Penal Code, 1860 had been made out.

27. Again, in the present case, the investigations in the police case are yet to be concluded. It has not resulted in filing of a charge sheet, and consequently, question of the trial Court considering framing of charges does not arise.

28. *Sumitha Pradeep (supra)* has considered an application for cancellation of anticipatory bail granted by the

High Court. It has observed that, custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. It has observed that, there may be many cases in which custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the Court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial integration can be one of the grounds to decline anticipatory bail. However, even if custodial integration is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

29. The writ Court while granting the interim protection on December 22, 2022 had noted that, it is debatable whether Section 304 (II) of the Indian Penal Code, 1860 or Section 304A thereof would apply. That comment had been made while the investigations were in progress and prior to

petitioner No. 1 taking the stand with regard to the organiser of the event and the documents annexed to the writ petition.

30. It would be presumptuous to take a call on either side of the debate as has been noted by the writ Court in the order dated December 22, 2022 on the basis of the materials presently available in the case diary. The materials in the case diary have not ruled out Section 304 (II) of the Indian Penal Code, 1860 conclusively, particularly in view of the statements recorded under Section 161 of the Criminal Procedure Code of eyewitnesses claiming that, the petitioners were present at the place of occurrence during the incident and continued with the blanket distribution despite the developing situation of a stampede. The case diary has materials suggesting that, 3,000 blankets had been purchased and that 6,000 coupons had been distributed to the members of the public for the purpose of distribution of blankets. The electricity permission has turned out to be not genuine. Issues have been raised with regard to the person applying for the electricity permission. The owner of the land where the program was held has denied granting any permission to do so.

31. The coordinate bench while considering the prayer for bail of other co-accused in the police case did not return a

finding that there were no materials pointing towards Section 304 of the Indian Penal Code, 1860.

32. The conduct of the petitioner No. 1 subsequent to the order dated December 22, 2022 passed in the writ petition lends substantial credence to the contention of the State that, the petitioner No. 1 had mis-utilised the protective order of the High Court and actively tried to misguide the investigations. The case diary has statements recorded under Section 161 of the Criminal Procedure Code claiming that, the petitioners mis-utilised their political clout in an attempt to silence the witnesses.

33. In view of the discussions above, we are not inclined to grant anticipatory bail to any of the petitioners.

34. CRM (A) 719 of 2023 is dismissed.

35. Urgent Photostat certified copy of this judgement and order be supplied to the parties, if applied for, subject to the compliance of all formalities.

[DEBANGSU BASAK, J.]

36. I agree.

[MD. SHABBAR RASHIDI, J]