

10.05.2023

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C. R. M. (DB) 1119 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 22.03.2023 in connection with Chanchal Police Station Case No.257 of 2023 dated 04.03.2023 under Sections 341/324/307/379/34 of the Indian Penal Code. (G.R. Case No.538 of 2023)

And

In Re: ***Kali Kumar Das***

... .. Petitioner

Mr. Bibaswan Bhattacharya

Ms. Sanjana Saha

Sk. Sahil Ahad

... for the petitioner

Mr. Debasish Banerjee

Mr. Subrata Saha

Mr. Vijay Verma

... for Arka Das,
de-facto complainant

Mr. Sekhar Kr. Basu .. Sr. Advocate

Mr. Sandipan Ganguly, Sr. Advocate

Mr. Arkadeb Bhattacharya

... for Khairul Alam, Secretary,
Bar Association, Chanchal

Mr. Sabyasachi Chatterjee

Mr. Omar Faruk Gazi

Mr. Akashdeep Mukherjee

... for Badruj Jaman & Obaidur
Rahman

Mr. Prasun Kumar Dutta .. Id. Addl. Public Prosecutor

Mr. Santanu Deb Roy

... .. for the State

1. Petitioner had been arrested in the present case being Chanchal Police Station Case No. 257 of 2023 dated 04.03.2023 under Sections 341/324/307/379/34 of the Indian Penal Code. On 23.03.2023 when he sought leave to file the bail application

without the certified copy of the order rejecting bail as he had been prevented from obtaining a copy of the order. Under such circumstances, this Court directed the learned District Judge, Malda to ensure the certified copy of the order is made available to the petitioner within 24 hours. He was also directed to submit report why the order had not been uploaded in the NJDG data base.

2. On 24.03.2023 report was filed by the learned District Judge. On that day, petitioner again submitted that he had been obstructed and was unable to obtain certified copy of the order. In this backdrop, the petitioner was directed to submit affidavit disclosing particulars of the persons who had restrained him from obtaining the certified copy of the order.

3. Affidavit sworn by Manab Das, son of the petitioner has been placed on record. In the said affidavit it has been averred as follows:-

“That the Secretary of the Bar Association of Chanchal Khairul Alam, also called us and stated to us that if we apologize then our father (petitioner) will be released from Jail right now. He also stated that we cannot get a lawyer as the matter is against a lawyer and we need permission to proceed with such type of cases.

During the hearings, the lawyers Arka Das, Badruj Jaman, Obaidur Rahaman used to enter the court snatch the bail petition and come outside the court and start slanging and threatening us.

We have been restrained from entering the court premises and no lawyer is there to help us, as letters have been distributed by these three advocates that nobody should stand on our side.

On the Whatsapp group of Bar Association of Chanchal, Advocate Arka Das has uploaded a letter stating that nobody should help us or give any assistance.

A copy of the letters has been annexed thereto and marked with letter ‘A2’.

I have been restrained from entering the court premises and neither apply for any certified copies of the order.”

4. In view of the aforesaid averments, Mr. Khairul Alam, Secretary of the Chanchal Bar Association, learned Advocates Mr. Arka Das, Mr. Badruj Jaman and Mr. Obaidur Rahman were called upon to appear in person and submit affidavits explaining their conduct.

5. They have filed their respective affidavits.

6. In the affidavit sworn by Mr. Khairul Alam, Secretary of the Chanchal Bar Association he denied any interaction with Manab Das or Madhumita Das, being the son and daughter of the petitioner.

7. Affidavit sworn by Mr. Arka Das discloses a property dispute between the parties. It is further averred that on 04.03.2023 he had been physically assaulted by the petitioner, his children Manab and Madhumita and others. Present case had been registered. He contended daughter of the petitioner i.e. Madhumita had suffered injury in the course of the scuffle. He was not responsible for the injury.

8. With regard to obstruction to legal representation of the petitioner, it is contended the allegation is false and the latter had been duly represented by his lawyer in collateral proceedings.

9. In the affidavit filed on behalf of Mr. Badruj Jaman and Mr. Obaidur Rahman they have denied and disputed their roles in the assault. It is also contended they were not named in the counter case lodged by Mina Rani Das, wife of the petitioner. Affidavit-in-reply has been filed on behalf of the petitioner.

10. In the reply it is stated that the said Mina Rani Das had no knowledge with regard to the contents of the FIR which was scribed at the behest of the police. Subsequently another written complaint was lodged by Madhumita Das with regard to the incident. Affidavit also enclosed the certified copy of the orders pertaining to the said case.

11. From the materials on record, it appears on 04.03.2023 there was a scuffle in the Court premises between the petitioner and his son on one hand and Arka Das, a learned Advocate of the said Court on the other hand. Both parties appear to have suffered injuries. Present case was registered at the behest of Mr. Arka Das while counter case was registered by the wife of the petitioner. Investigations in both the cases are in progress. On 05.03.2023 petitioner was arrested in the case. Secretary, Chanchal Bar Association through a post on a social media platform intimidated members of the Bar Association not to represent the petitioner. No lawyer appeared on his behalf. Order dated 05.03.2023 reads as follows:-

“Accused Kali Kumar Das, son of Baidyanath Das of Maltipur PS – Chanchal Dist – Malda is arrested and produced before this Court along with arrest memo and challan Let the accused be taken into custody to 18.03.2023.

None moved.

To date.”

12. On 18.03.2023 when petitioner is alleged tried to move a bail application, Mr. Arka Das, Mr. Badruj Jaman and Mr. Obaidur Rahman misbehaved with his son and daughter and compelled them to withdraw the application.

13. The following order was passed:-

“Accused Kali Kumar Das is produced from J/C through (V/C). To 01/04/23 for production.”

14. It is interesting to note the line “bail petition filed by the accused” had been struck out in the said order. Subsequent order dated 23.03.2023 clarified the state of affairs. It is noted therein that the records of the case had not been posted before the Presiding Officer in Charge and the bail application filed on behalf of the petitioner had been withdrawn due to pressure of the Members of the Local Bar. For better appreciation the said order is set out below:-

“Order dated 23.03.2023

The record is put up before me today by the GRO Chanchal.

On perusal of the record it appears that the record was not put up on the date fixed before the P.O in charge which was 18.03.2023. This is not the first time GRO Chanchal has failed to put up the record on the date fixed. Therefore, the GRO Chanchal is directed to report as to why this record was not placed before the P.O in charge on 18.03.2023. He is also to report whether any petition was filed on behalf of the accused as there is on over writing in the unsigned order dated 18.03.2023.

The Ld. Judicial Magistrate, 2nd Court, Chanchal, Malda who was at the P.O in charge on that day is also requested to report whether this record was placed before him or not on the date fixed.

Both reports to be submitted in the later half of this day.

Copy of this order be sent to Ld. Judicial Magistrate, 2nd Court, Chanchal, Malda for his information.

Later order dated 23.03.2023

Received the compliance report of Ld. Judicial Magistrate, 2nd Court, Chanchal, Malda.

As per the report, record was not placed before him on 18.03.2023. received the report of GRO Chanchal in which he has stated that a bail petition was filed on behalf of the accused but the same was withdrawn due to pressure from the Local Chanchal Bar Association. Record was misplaced and therefore, could not be placed before the PO in-charge.”

Reports be kept with record.

To date.

GRO to ensure that each and every record is placed before the PO on the date fixed.”

15. Facts recorded in the aforesaid orders clearly show that the petitioner had been denied legal representation at the time of his production before the learned Magistrate. In ***Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid vs. State of Maharashtra***¹ the Hon'ble Apex Court unequivocally declared that an arrestee who is produced before the learned Magistrate must be offered a legal representative. Failure of this duty on the part of the judicial authority would attract serious consequences. Needless to mention this mandate could not be complied with either on the date of first production or during the subsequent production i.e. 18.03.2023 due to obstruction from the members of the local Bar. Report of the GRO, Chanchal shows that due to their obstruction bail application submitted by the petitioner on 18.03.2023 had to be withdrawn. These circumstances corroborate the case of the petitioner that due to obstruction by members of the local Bar he could not avail of his fundamental right to be represented by a lawyer of his choice. Unheard he was remanded to custody and had to approach the higher Court for redress. Undoubtedly there has been an infraction of his fundamental rights enshrined under Article 21/22 of the Constitution and petitioner has been denied his basic right to access the justice.

16. Affidavit filed on behalf of the petitioner shows that Arka Das, Mr. Badruj Jaman and Mr. Obaidur Rahman had snatched the bail petition and had threatened them. It also appears Secretary, Bar Association had intimated through social

¹ AIR 2012 SC 3565

media the members not to file bail application on behalf of the accused. It is true that the case arose out of a scuffle between members of the Bar Association and the petitioner. Case and counter case have been registered. But this would not justify the unprofessional conduct of the members of the legal profession who appears to have denied the right to legal representation to a litigant. Members of the Bar are hand maidens of justice and their duty is to create a fair and just eco-system in the Court so that every litigant has equal opportunity to present his case. Unionization at the Bar against a litigant who seeks legal redress against one of their members is an anathema to equal and fair access to justice. Conduct of the Secretary of the Bar Association in intimating its members not to file bail application is not only against professional ethics but prima facie interferes with the administration of justice. In **A.S. Mohammed Rafi v. State of Tamil Nadu Represented by Home Department and Others**², the Apex Court held as follows:-

“24. Professional ethics require that a lawyer cannot refuse a brief, provided a client is willing to pay his fee, and the lawyer is not otherwise engaged. Hence, the action of any Bar Association in passing such a resolution that none of its members will appear for a particular accused, whether on the ground that he is a policeman or on the ground that he is a suspected terrorist, rapist, mass murderer, etc. is against all norms of the Constitution, the statute and professional ethics. It is against the great traditions of the Bar which has always stood up for defending persons accused for a crime. Such a resolution is, in fact, a disgrace to the legal community. We declare that all such resolutions of Bar Associations in India are null and void and the right-minded lawyers should ignore and defy such resolutions if they want democracy and rule of law to be upheld in this country. It is the duty of a lawyer to defend no matter what the consequences, and a lawyer who refuses to do so is not following the message of The Gita.”

² (2011) 1 SCC 688

17. Similarly, Arka Das, Mr. Badruj Jaman and Mr. Obaidur Rahman appear to have interfered with the judicial proceeding by preventing him to file bail application on 05.03.2023, compelling him to withdraw the bail application on 18.03.2023, threatening his son and daughter and obstructing them from obtaining certified copies of the orders of the Court. Their affidavits merely contain bare denial of the incident which prima facie runs counter the facts recorded in the orders passed by the trial Court.

18. In the light of the aforesaid circumstances, we are of the opinion viz. Mr. Khairul Alam, Secretary, Bar Association, Mr. Arka Das, Mr. Badruj Jaman and Mr. Obaidur Rahman appear to have prima facie interfered with the administration of justice by obstructing legal representation to the petitioner and preventing him to apply for bail before the Magistrate. Prima facie their acts constitutes criminal contempt under Section 2(c) of the Contempt of Courts Act. Accordingly, we issue Rule upon Mr. Khairul Alam, Mr. Arka Das, Mr. Badruj Jaman and Mr. Obaidur Rahman to show cause why they shall not be punished for committing criminal contempt under Section 2(c) of the said Act for the following acts:-

- (a) With regard to Khairul Alam for posting a message on the social media platform intimating the members of the Bar not to file bail application on behalf of the petitioner;

(b) With regard to Mr. Arka Das, Mr. Badruj Jaman and Mr. Obaidur Rahman for:-

- (i) Preventing the petitioner to move bail application on 05.03.2023;
- (ii) Compelling him to withdraw the same on 18.03.2023 and;
- (iii) Threatening his son and daughter and obstructing them from obtaining certified copies of the orders of the Court below.

19. The order of this Court is read out in the presence of the alleged contemnors and their Counsels. On their prayer, service of the Rule be dispensed with. Matter be placed before the appropriate Bench on 12th June, 2023. Alleged contemnors are directed to be personally present before the said Bench at 10:30 A.M.

20. We have also perused the report of the Central Project Coordinator with regard to uploading of orders on the NJDG Portal. Central Project Coordinator is directed to take all necessary steps for prompt uploading of all orders of all courts in the State on the NJDG portal.

21. We have also perused the case diary. Hence, there is no allegation of misuse of liberty. Interim bail granted to the petitioner is confirmed on the same terms and conditions.

22. We also direct the District Police Administration to render necessary police protection to the petitioner and his

family members so that they may participate in the judicial proceeding without fear or interference from any quarter whatsoever.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)