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09.08.2023
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Ct 14

WPA 19343 of 2023

Provas Biswas

-vs-

The State of West Bengal & ors.

Mr. Sourav Chatterjee

Mr. Moyukh Mukherjee

Mr. Soumya Nag

Mr. Pritam Roy

Mr. Soewel Bhattacharjee

....for the petitioner

Mr. Sirsanya Bandopadhyay

Mr. Arka Kr. Nag

...for the State

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to have the petitioner released on parole so that he can participate in the formation of board for the Duttapulia/29 Gram Panchayat on 10.08.2023 at 11:30 AM.

Affidavit of service filed on behalf of the petitioner is taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is a winning candidate for the Duttapulia/29 Gram Panchayat election of 2023. He was declared as a winner on 11.07.2023. A certificate was issued in this regard on the same date. The notification for formation of board was published on 31.07.2023. Immediately thereafter on 01.08.2023, an FIR was lodged

under Section 376 of the Indian Penal Code showing the petitioner as an accused and giving the date of occurrence as 15 days prior to the FIR. This was a malicious exercise of power to somehow prevent the petitioner from participating in the board formation process because there the ruling dispensation and the main opposition party have equal number of seats with two other seats going to another political party. This is an unfortunate incident where the process of law is abused to such nadir to gain political benefits. The petitioner would pray for bail before the appropriate forum. However, in view of the exigency, the petitioner may be permitted to come out on parole or otherwise and be escorted by the respondent police authorities to the venue for the process of board formation. In fact, the petitioner has already applied for parole, which has not been responded to as yet. In similar cases involving persons close to the ruling dispensation, parole has been allowed on the very day. Reliance is also placed on a decision of this Court passed on 07.08.2023 in WPA 19024 of 2023.

Learned counsel for the State submits as follows. Allegations made in the writ petition are strongly denied. This is a serious case where bail should not be granted by this Court. Even for parole, there is a procedure to be followed. The Administration, for a moment, did not make any attempt to prevent the petitioner from participating in the democratic process of formation of board. The defacto-complainant/victim has not been made a party.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition.

Considering the urgency that the board formation is to take place tomorrow i.e. on 11.08.2023 at 11:30 AM, even if the defacto-complainant had been made a party, it is doubtful that a notice could have been served on her in time or she could have effectively represented herself before this Court. In any event, this is not an application for quashing or even for bail.

In exigent circumstances, paroles have been granted on the very same day on several occasions.

This Court is not going into the veracity of the allegations contained in the criminal case. The allegation of malafide can be taken up by the petitioner at an appropriate forum.

However, since an application has already made for release on parole to participate in the board formation process and the same has not been responded to, let the petitioner be released on parole tomorrow i.e. on 10.08.2023 so that he can participate in the meeting for board formation under the supervision of the respondent police authorities. The respondent police authorities shall have the release secured sufficiently ahead in time so that they can escort the petitioner to the Gram Panchayat Office for participation in the board formation process tomorrow i.e. on 10.08.2023 at 11:30AM. Immediately after the meeting is over, the petitioner shall be sent back to the judicial custody forthwith

under police escort.

Since affidavits were not called for, allegations are deemed not to have been admitted.

With these directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

Parties shall act on a server copy of this order downloaded from the official website of this Court.

(Jay Sengupta, J.)