

21-08-2023
Court No.3
bm/mg/2.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

C.R.R. 34 of 2020

**JOY GHOSH @ JOYDEEP GHOSH @ JOYDIP
GHOSH**

**Vs.
The State of West Bengal & Anr.**

Mr. Sourav Chatterjee
Mr. Sanat Das
Mr. Sujan Chatterjee
Mr. Kunaljit Bhattacharjee
... for the petitioner.

Mr. Aditi Shankar Chakraborty
Mr. Nilay Chakraborty
... for the State

The instant application is preferred against the impugned Order dated 1st February, 2020 passed by the learned Additional Sessions Judge, Dinhata in connection with Sessions Case No. 19 of 2009 arising out of G.R. Case No. 388 of 2018 dated 4.10.2018 under Sections 341/447/302/120B of the Indian Penal Code refusing to discharge the present petitioner.

At the time of consideration of charge the present petitioner raised two fold pleas. The first plea of the petitioner was that no specific allegations are there against the petitioner as to how he participated in any manner in the commission of the alleged offence. Paucity of incriminating materials or even absence of incriminating materials is one of the grounds for filing discharge application. The second ground is that the petitioner was engaged in attending/participating in a meeting at the chamber of Vice Chairman of the Municipality. This plea was supported by official reply under Right to Information Act from the Municipal Authority.

The Trial Court, on consideration of the pleas, dismissed the application for discharge on observing that from materials on record prima facie, it appeared that prosecution was able to establish the allegations against all the accused persons including the present petitioner to frame charges under Sections 341/447/302/120B of the Indian Penal Code. On the basis of this observation the application was rejected on merit.

Mr. Chatterjee, learned Counsel for the petitioner reiterated those pleas before this Court. The first contention of Mr. Chatterjee is that the Court cannot embark upon detailed fact finding or factual analysis yet, Court must be satisfied at the time of framing of charge that some prima facie materials are there. He further submitted that in so far as conspiracy is concerned some elements must be present similarly in the record to sustain such charge.

Mr. Chatterjee relies upon some judgments i.e. Dipakbhai Jagdishchandra Patel Vs. State of Gujarat & Anr. Reported in (2019) 16 SCC 547, Kanchan Kumar Vs. State of Bihar reported in (2022)9 SCC 577, Anita Malhotra Vs. Apparel Export Promotion Council & Anr. Reported in (2012)1 SCC 520, Harshendra Kumar D. Vs. Rebatilata Koley & Ors. Reported in (2011)3 SCC 351 along with Vikramjit Kakati Vs. State of Assam reported in 2022 SCC Online SC 967.

Case diary is produced today. I have perused the case diary. At least two witnesses examined by the investigating officer, namely, the present petitioner was

present on the place of occurrence. It is not simply a case that allegations against the petitioner is unsubstantiated and baseless. Alibi is a defence which can be considered at the time of trial so, at this stage, this defence cannot be taken as a gospel truth as the evidence.

Prima facie, there are materials against the present petitioner in case diary; at least, it appears from the statements of two witnesses that the petitioner was present on the place of occurrence at the time of the commission of offence indicating further his complicity and participation. Therefore, considering the materials on record, this Court cannot simply discard or set aside the Order of the Trial Court being the impugned Order. The Order passed by the Trial Court is a reasoned one demanding no interference.

Accordingly, the instant application stands dismissed on merit.

It is made clear that the Trial Court shall expedite trial and shall pass Order on the evidence adduced without being influenced by the observations made hereinabove since the observations made above are only based on

the case diary not on the basis of evidence to be adduced in the trial.

The instant revisional application is disposed of along with pending applications, if any.

(SUGATO MAJUMDAR, J.)