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29.02.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 1645 of 2024

Sanjib Roy
Vs.
The State of West Bengal & Ors.

Mr. Bibek Chatterjee,
Mr. Sourav Dutta,
Ms. Jahanara Begum,
Ms. Paramita Saha,
Ms. Susmita Saha
...for the petitioner

Mr. Sounak Bhattacharya,
Mr. Anujit Mukherjee
...for the State

Mr. Bratin Kumar Dey
...for the respondent no. 2

Mr. Md. Wasim Akram
...for the respondent nos. 5 and 6

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioner alleges that the son of the petitioner is an accused in a criminal proceeding in the Malda Court. However, due to non-cooperation and a resolution by the Malda Bar, the son of the petitioner is not having access to justice in the said court.
3. Learned counsel for the petitioner argues that the bail application of the petitioner's son has been returned to the petitioner's son and places reliance on the annexure at page 22 of the writ petition,

which purportedly is a photocopy of the stamped bail application. Learned counsel for the petitioner submits that if the bail application was on record and was entertained, there was no possibility of the petitioner having a copy of the same.

4. Learned counsel for the petitioner further argues that since the brother of one of the respondents (who is a de facto complainant against the petitioner) is an advocate practicing in the Malda Court, the Malda Bar Association is not cooperating with the petitioner's son.

5. Learned counsel appearing for the Malda Bar Association vociferously controverts such allegations.

6. Learned counsel hands over the certified copy of the order sheet of the entire criminal case where the petitioner's son is one of the co-accused persons and points out that the bail application of the petitioner's son was duly moved by a learned advocate along with other co-accused persons but was rejected by the Court in its judicial side.

7. Moreover, no such complaint, as made at present before this Court, was moved before the District Judge of the Malda Court.

8. Learned counsel for the Malda Bar Association also hands over a printout of a server copy of an order dated August 18, 2022 passed in CRM (DB)

2776 of 2022 passed by a Division Bench of this Court on the application of a co-accused with the petitioner's son, where the investigation was directed to be assigned to the C.I.D., West Bengal.

9. Learned counsel for the Malda Bar Association seeks to impress upon this Court that if a co-accused of the petitioner's son could move this Court and also obtain an order from the Division Bench of this Court, there could not be any reason why the petitioner's son has a special grievance against the Malda Bar Association.

10. A perusal of the order sheet, a certified copy of which is kept on record, clearly shows that at least on August 21, 2023, a bail petition was moved on behalf of the petitioner's son Raju Roy as well as one Subhankar Mistri. However, the bail was rejected in her/his judicial wisdom by the Chief Judicial Magistrate, Malda. The photocopy of the order of the Division bench also shows that the same co-accused with whom the petitioner son's bail petition was moved before the Malda Court, has also got an order from the Division Bench of this Court showing that they have access to justice.

11. Hence, the allegations made against the Malda Bar Association have not been substantiated by the petitioner.

12. Insofar as the stamped bail petition being in custody of the petitioner is concerned, the said fact *ipso facto* does not prove any complicity of the Malda Bar Association in the petitioner having the said copy. Rather, the concerned District Judge should undertake an enquiry as to how the stamped bail petition of the petitioner's son could be returned to the petitioner's son.

13. Be that as it may, leaving the same for some other day and some other challenge, the fact remains that the allegations made by the petitioner against the Malda Bar Association have not been substantiated.

14. However, this Court is well aware of the fundamental right of an accused to get access to justice, which is a part of the right to life enshrined in the Constitution.

15. Accordingly, there is nothing to prevent the petitioner, on behalf of his son, to approach the District Legal Services Authorities, Malda for engagement of an independent Advocate, preferably not an Advocate of the concerned Court, for conducting the case on behalf of the petitioner's son.

16. The petitioner shall also be at liberty to approach the West Bengal Legal Services Authorities for such appointment, if need be, to

ensure that an Advocate from outside Malda is engaged to conduct the case for the petitioner's son.

17. Nothing in the above liberty, however, shall be construed to be a castigation or an acceptance of the bald allegations against the Malda Bar Association. It is deemed that the allegations made against the Malda Bar Association in the writ petition are not taken note of by this Court at all.

18. Since no affidavits are invited, it is deemed that none of the allegations made in the writ petition are admitted by any of the respondents.

19. Accordingly, W.P.A. No. 1645 of 2024 is disposed of by granting liberty to the petitioner, on behalf of his son Raju Roy, to approach the West Bengal Legal Services Authorities, alternatively the Malda District Legal Services Authorities, for engagement of an Advocate to conduct the case of the petitioner's son in the Malda Court, preferably an Advocate who does not regularly practice in the Malda Court.

20. If such an approach is made, either of the Authorities, as applicable, shall immediately decide on the same and preferably within a month from the date of such approach being made, engage an Advocate in terms of the above direction to contest the case of the petitioner's son.

21. There will be no order as to costs.

22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

Sabyasachi Bhattacharyya, J.