

14.11.2024

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SG
[OP]

C. R. M. (A) 3704 of 2024

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure read with Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Narayangarh Police Station Case No. 87 of 2024 dated 23.04.2024 under Sections 447/323/325/354B/435/34 of the Indian Penal Code read with Sections 3(1)(r)(s) of the Schedule Caste and Schedule Tribes Prevention of Atrocities Act.

And

In Re: Saktipada Bhunia and Ors.

... ... Petitioners

Mr. Noni Gopal Chakraborty,

... ... for the petitioners

Mr. Bidyut Kumar Ray,

Mr. Trina Mitra.

... ... for the State

Mr. Prabir Kumar Mitra,

Ms. Subhanwita Ghosh,

Ms. Sananda Bhattacharjee.

... ... for the de facto complainant

1. Petitioner contends the allegations are false and do not disclose ingredients of offence punishable under Section 3(1)(r)(s) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. Accordingly, they pray for anticipatory bail.

2. Learned lawyer for the State opposes the prayer for anticipatory bail.

3. Learned lawyer for the *de facto* complainant also opposes the prayer for anticipatory bail.

4. We have considered the materials on record including the FIR. In the FIR it is alleged petitioners had prevented the members of the Scheduled Caste community from performing a Puja. Their children were also not allowed to eat food with others

in the primary school. Nothing is placed on record to show the allegations are patently absurd or inherently improbable. A plain reading of the FIR discloses a prima facie case under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act.

5. In light of the aforesaid prima facie materials and the bar under Section 18/18A of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, we are of the opinion the application for anticipatory bail is not maintainable. However, we note offences are punishable with imprisonment less than 7 years and the petitioner can be arrested only if the condition set out in Section 35(b)(i) of BNSS are satisfied. Nothing is placed on record to show the investigating officer has recorded requisite satisfaction necessitating arrest in terms of ***Arnesh Kumar vs. State of Bihar***¹.

6. In such view of the matter we give liberty to the petitioner to appear before the trial Court within seven days from date and pray for regular bail.

7. In the event petitioner appears and prays for regular bail, the trial Court shall consider his bail prayer on the same day keeping in mind the absence of satisfaction recorded by the police officer necessitating arrest in terms of Section 35(b)(i) of BNSS and pass appropriate order in accordance with law in light of ***Arnesh Kumar*** (supra) and ***Satender Kumar Antil vs CBI and Anr.***²

¹ (2014) 8 SCC 273

² (2022) 10 SCC 51

8. The application for anticipatory bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)