

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice Sujoy Paul

And

The Hon'ble Justice Partha Sarathi Sen

MAT 67 of 2026
With
IA No.CAN 1 of 2026

Sankar Ghosh
-Vs-
The State of West Bengal & Ors.

For the appellant : Mr. Billwadal Bhattacharyya, Sr. Adv.
Mr. Anish Kumar Mukherjee
Mr. Suryaneel Das
Mr. Chiranjit Pal
Ms. Megha Datta
Mr. Tamoghna Pramanick

For the Respondent/State : Mr. Kishore Datta, Ld. AG
Mr. Swapan Banerjee
Ms. Sumita Shaw
Mr. Diptendu Narayan Banerjee
Mr. Soumen Chatterjee

Hearing concluded on : 27.01.2026

Judgment on : 29.01.2026

PER, SUJOY PAUL, CJ.:

1. This *intra* Court appeal takes exception to the Order dated 15.01.2026 passed by ld. Single Judge in WPA No. 736 of 2026 whereby his writ petition was disposed of by ld. Single Judge by issuing certain directions.

Factual Matrix:

2. The appellant/petitioner an elected member of Legislative Assembly preferred an application seeking permission to organise a peaceful sit in demonstration in front of Nabanna (Head Quarter of State Government) on 16.01.2026. It is stated in the application that 50 members of Legislative Assembly shall participate in the said demonstration. In turn, the police administration by letter dated 12.01.2026 rejected the said application by assigning certain reasons. This rejection order became subject matter of challenge in WPA No. 736 of 2026. The Id. Single Judge opined that petitioner deserves permissions to hold such demonstration at a different place, i.e. Mandirtala Bus Stand from 10.00 A.M. to 4.00 P.M. subject to certain conditions mentioned in the order.

Contention of appellant:

3. Learned Senior Counsel for the appellant submits that right to protest is a fundamental right in a constitutional democracy. By placing heavy reliance on the Judgment of Supreme Court in the case of ***Himmat Lal K. Shah vs. Commissioner of Police, Ahmadabad and Another*** reported in ***(1973) 1 SCC 227***, Shri Billwadal Bhattacharyya, learned Senior Counsel urged that freedom of assembly in open spaces and public streets are essential elements of a democratic system and forms part of the tradition of our national life. He placed reliance on the said Judgments extensively to bolster the submission that the rejection letter issued by police is bad in law. An interlocutory order passed by

coordinate bench in WPA (P) 360 of 2024 is relied upon to contend that this court permitted demonstration/protest near Nabanna. Thus, there should not be any impediment in permitting the present petitioners to sit in demonstration in front of Nabanna. Furthermore, it is urged that in **WPA 15915 of 2024 (Suwendu Adhikari vs. The State of West Bengal & Ors.)** on 03.07.2024 the ld. Advocate General entered appearance and urged that petitioner will be permitted to conduct sit in demonstration/Dharna on 14th July, 2024 for a period of four hours. He submits that there should not be any difference in stand in the present matter and it is difficult to gather while State is taking a different view in the present matter when nature of demonstration and place of demonstration is exactly same. Shri Bhattacharyya, learned Senior Counsel further submits that prohibitory order under Section 144 Cr.PC (Section 163 of BNSS) cannot be issued for an unlimited period. He placed reliance on certain paragraphs of the Judgment of Supreme Court in the case of **Ramlila Maidan Incident, In Re (2012) 5 SCC 1**. He also referred certain paragraph of Judgment of Supreme Court in the case of **Amit Sahni (Shaheen Bagh, In Re vs. Commissioner of Police and Ors. (2020) 10 SCC 439** and argued that the petitioner has a valuable right to sit in 'Dharna' in front of 'Nabanna'. He has no difficulty if a limited area is earmarked for this purpose beyond which the demonstrators will not move. During demonstration, sound system will not be used and only 50 persons will participate in the demonstration. In this backdrop, the petitioners may

be permitted to sit in demonstration at the desired place. The order impugned needs to be challenged because for any future 'Dharnas' proposed in front of Nabanna, the impugned rejection letter will come in the way of the petitioner.

4. Shri Billwadal Bhattacharyya, learned senior counsel further submits that by exercising the power under the Police Act, the State Government can "regulate" the permission sought for demonstration but cannot totally frustrate the purpose by putting unreasonable contentions.

Contention of the State:

5. The learned Advocate General for the State urged that it is a misconceived notion that the petitioner has any absolute fundamental right under Article 19 of the Constitution to lodge 'Dharna' at any place or at any time. Section 144 of Cr.PC. can also be invoked in cases of "likelihood" or "tendency". The power conferred by Section 144 of Cr.PC. is exercisable not only where danger exists at present but also when there is an apprehension of danger. Reliance is placed on Constitution Bench judgment of Supreme Court in case of ***Babulal Parate vs. State of Maharashtra & Ors.*** reported in **1961 SCC OnLine SC 48**.
6. The next reliance is on the judgment of Supreme Court in case of ***Railway Board Representing the UOI vs. Niranjan Singh*** reported in **(1969) 1 SCC 502**. It is urged that right to assemble and protest can also be regulated by putting reasonable conditions. It is canvassed that

the freedom to protest does not include the freedom to choose any place of the choice of the protestors. The State can always consider whether right to protest can hamper the rights of others.

7. The next reliance is on the judgment of Supreme Court in ***Ramlila Maidan (supra)***. It is urged that in this judgment the Apex Court has considered its previous judgments and opined that if order passed by executive are backed by valid law and restriction imposed thereby is likely to withstand the test of reasonableness which has a direct nexus to the object, order will not bear the tag of invalidity on its forehead. The stringent conditions cannot be interfered with if they pass the test of reasonability.
8. Furthermore, learned Advocate General urged that judgment of ***Himmat Lal K. Shah (supra)*** was considered in ***Ramlila Maidan (supra)*** and it was clearly held that in the previous case, it was held that 'right to assembly' does not mean that right can be exercised at any and every place. Para 54 of judgment of ***Ramlila Maidan (supra)*** was heavily relied upon to contend that right to hold meeting is subject to control of the appropriate authority regarding the time and place of the meeting. The order impugned before learned Single Judge cannot be said to be patently illegal, without jurisdiction or issued with ulterior motive/extraneous consideration. In ***Ramlila Maidan (supra)*** it was further held that order under Section 144 Cr.PC. can be issued during existence of 'actual unlawful assembly' as well as about a 'potential unlawful assembly'.

9. Lastly, the judgment of Supreme Court in ***Shaheen Bagh (supra)*** was relied upon to contend that Apex Court again considered the judgment of ***Himmat Lal K. Shah (supra)*** and opined that reasonable restrictions can be put to regulate the demonstrations.

Rejoinder Submission:

10. Shri Billwadal Bhattacharyya, learned senior counsel for the petitioner also placed heavily reliance on Para 54 and 225 of the judgment of ***Ramlila Maidan (supra)*** to highlight that the order issued under Section 144 Cr. PC is temporary in nature and can be passed to prohibit the meeting or to prevent an imminent breach of peace. If authority anticipates an imminent threat to public order or public tranquility, it would be free to pass desirable directions within the parameters of reasonable restrictions on the freedom of individual. The Section 144 Cr. PC can be invoked only in an emergent situation. To sum up, Shri Bhattacharyya urged that the factors for invoking Section 144 must be – (i) temporary, (ii) imminent and (iii) emergent in nature. These conditions are not satisfied while order under Section 144 Cr.PC/163 BNSS was issued in the instant case.
11. Lastly, learned senior counsel for petitioner urged that in view of the order of this Court in ***Debranjana Banerjee vs. State of West Bengal & Ors.*** reported in ***WPA(P) 360 of 2024***, the prohibitory order/letter issued by State Government is bad in law.
12. Parties confined their argument to the extent indicated above. We have heard them at length.

13. The extent to which liberty prevails and the limit from where reasonable restriction begins was always a conundrum for the courts. The said conundrum was perhaps best explained by K.K. Mathew, J. in **Smt. Indira Nehru Gandhi vs. Shri Raj Narain and Anr.** reported in **1975 (Supp.) SCC 1**. The words of Wisdom are:

“The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence; and, the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these means in the ever-shifting tangle of human affairs”

(Emphasis Supplied)

14. As noticed above, in the instant case, Shri Billwadal Bhattacharyya, learned senior counsel for the petitioner criticised the prohibitory order issued under Section 163 of BNSS by raising certain grounds. In our opinion, the said notification dated 27th December, 2025 issued under Section 163 BNSS by executive Magistrate for metropolitan area of Howrah was not called in question by the appellant. In the absence thereof, there is no occasion for us to examine whether necessary ingredients for issuing such order under Section 163 of Cr.PC. were available or not. The argument raised in this regard, thus, must fail. Apart from this, the Apex Court in the case of **Babulal Parate (supra)** opined that an aggrieved person against the order passed under Section 144 Cr.PC (now Section 163 BNSS) can prefer an application assailing the decision of Magistrate imposing such prohibition. Thus, aggrieved person against such prohibition order is not remedy less.

15. The Apex Court in ***Babulal Parate (supra)*** has taken note of Sub-Clause 2 and 3 of Article 19 of the Constitution and made it clear that the right guaranteed under Article 19 of the Constitution is not absolute right but can be subject to limitations specified in Clause 2 and 3 of the Constitution.
16. In the case of ***Railway Board (supra)***, the Supreme Court made it clear that the fundamental right flowing from Article 19 of the Constitution does not mean that the demonstration can take place at whatever place the demonstrators' please.
17. In the case of ***Ramlila Maidan (supra)***, the Supreme Court opined that even stringent restrictions must stand the test of reasonableness. The Apex Court considered its previous judgment in ***Himmat Lal K. Shah (supra)*** on which heavy reliance is placed and even reproduced relevant paragraph in Para 48 of this judgment. The relevant portions shows that right to assemble does not mean that said right can be exercised at any and every place.
18. Interestingly, Para 54 of this judgment is heavily relied upon by learned senior counsel for the petitioner and learned Advocate General. The learned Advocate General pressed the finding wherein Apex Court opined that the right to hold meeting in public places is subject to control of appropriate authority regarding the time and place of meeting whereas learned senior counsel for petitioner argued that orders issued under Section 144 must be temporary, imminent and issued in emergent circumstance. At the cost of repetition, in our view, in the

absence of challenging the order issued under Section 163 BNSS, we find no reason to examine the legality, validity and propriety of the said order/action.

19. In the case of ***Shaheen Bagh (supra)***, the Apex Court again considered its previous judgments including the judgment of ***Himmat Lal K. Shah (supra)*** and ***Ramlila Maidan (supra)*** and came to hold that “we cannot accept the plea of applicants that an indeterminable number of people can assemble whenever they choose to protest”. Merely because in the instant case, number of demonstrators is determinable, it does not give any indefeasible right to lodge demonstration at a particular time and place.

20. The common string flowing from aforesaid judgments of Supreme Court shows that State is empowered to impose reasonable restrictions on demonstration. If in front of ‘Nabanna’, the State Headquarter, the demonstrations were not permitted, it cannot be said that the right to protest is taken away. We are unable to persuade ourselves with the line of argument of learned senior counsel for the petitioner that declining permission to lodge protest just in front of ‘Nabanna’ hits Article 19 of the Constitution. So far, order passed by Coordinate Bench in the case of ***Debranjana Banerjee (supra)*** is concerned, in that case, the PIL was filed by a person claiming himself to be a public spirited person who prayed that the protest or rally in front of ‘Nabanna’ be prohibited. The court declined to issue any such prohibitory order in favour of the petitioner therein. In the instant

case, the prohibitory order issued under Section 163 BNSS is not impugned in the writ petition. Thus, validity of said order cannot be examined in the present proceeding. The order of **Debranjana Banerjee (supra)** does not reflect that in said case any such prohibitory order under Section 163 was prevailing. Thus, said order is distinguishable and cannot be pressed into service in the peculiar factual backdrop of this case.

21. In view of foregoing discussion, in our view, the learned Single Judge has taken a plausible view which does not warrant interference in this *intra* court appeal. Resultantly, the appeal along with connected application are failed and hereby **dismissed**.

22. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)