

08.07.2021
Ct. No.13
Sl. No.1
pk/akd

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W.P.A. 11032 of 2021 [via video conference]

[Dhyanesh Narayan Guha -Vs- The State of West Bengal & Ors.]

Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee
Mr. Shakti Halder
Mr. Sarthak Mondal

... .. for the petitioner

Mr. Kishore Dutta .. Ld. Advocate General
... .. for the State

Learned Advocate General has made detailed submissions.

Interim protection to the writ petitioner against coercive action by the State is sought at this stage.

The facts that appear from the pleadings are that between 14th May, 2021 and 18th June, 2021 the following 13 FIRs have been registered against the petitioner based on complaints received from 13 different persons.

Sl. No.	Date	PS	FIR/GR Case No.	Section
1.	14.05.2021	Gaighata PS	405/2021 (GR Case No. 2208/2021)	420/406, IPC
2.	14.05.2021	-Do-	406/2021 (GR Case No. 2213/2021)	406/420, IPC
3.	17.05.2021	-Do-	415/2021 (GR Case No. 2216/2021)	420/406/506, IPC
4.	22.05.2021	-Do-	433/2021 (GR Case No. 2253/2021)	448/323/506/34, IPC
5.	23.05.2021	-Do-	436/2021 (GR Case No. 2309/2021)	448/323/506/34, IPC r/w. 25/27, Arms Act
6.	23.05.2021	-Do-	437/2021 (GR Case No. 2310/2021)	341/323/323/506/34, IPC r/w. 25/27, Arms Act

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7.	24.05.2021	-Do-	446/2021(GR Case No. 2313/2021)	448/323/506/34, IPC r/w. 25/27, Arms Act
8.	24.05.2021	-Do-	447/2021(GR Case No. 2314/2021)	448/323/506/34, IPC r/w. 25/27, Arms Act
9.	31.05.2021	-Do-	467/2021(GR Case No. 2402/2021)	341/323/506/34, IPC r/w. 25/27, Arms Act
10.	17.06.2021	-Do-	516/2021(GR Case No. 2582/2021)	25/27, Arms Act
11.	18.06.2021	-Do-	517/2021(GR Case No. 2615/2021)	341/323/506/34, IPC r/w. 25/27, Arms Act
12.	18.06.2021	-Do-	518/2021(GR Case No. 2616/2021)	341/323/506/34, IPC r/w. 25/27, Arms Act
13.	18.06.2021	-Do-	519/2021(GR Case No. 2617/2021)	420/406/506, IPC

All but one of the FIRs relate to incidents that have occurred after 2nd May, 2021. The other FIR is of incidents that took place in the year 2020. The petitioner has obtained bail in at least four cases on 15th June, 2021.

There are warrants of arrest issued against the petitioner in some FIRs after bail was obtained in other cases.

Learned counsel for the petitioner submits that the date 2nd May, 2021 assumes a lot of significance since the assembly elections in the State were concluded on that day when results were declared. The writ petitioner submits that complaints were filed and 13 FIRs were registered post 2nd May, 2021 only because the petitioner had moved from one political party to another. The complaints are a result of a vendetta of the complainants who belong to a rival party.

It is stated that the petitioner has no faith in the investigation agency any further given the number of FIRs registered in a single police station being Gaighata Police

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Station in the District of North 24-Parganas. There are a large number of other allegations made in support of the prayer for transfer of investigation from the State police to CBI. It is alternatively prayed orally that the said 13 FIRs be quashed.

The petitioner, therefore, at the present stage seeks interim order staying any investigation under the said FIRs.

Vehemently opposing the prayer of the petitioner, Learned Advocate General has made a four fold argument before this court. It is submitted that the Gaighata Police Station was only following the dicta laid down in the decision of the Supreme Court in the case of *Lalita Kumari vs. State of U.P.* reported in **(2014) 2 SCC 1**. Paragraph 120 of the said decision is placed to state that the Officer-in-charge, Gaighata Police Station had no other option than to register FIR on each of the 13 complaints received. Hence, there is no malice or ill motive or on the part of the police in registering the FIRs and starting investigation.

Learned Advocate General has placed reliance on the decision of the Supreme Court in the case of *State of M.P. vs. Pradeep Sharma* reported in **(2014) 2 SCC 171** which has been considered an earlier decision in the case of *Lavesh vs. State (NCT of Delhi)* reported in **(2012) 8 SCC 730**.

It is argued by the learned Advocate General that when a warrant of arrest is issued against an accused, the question of granting any interim order to interfere with the investigation which otherwise could not have been granted under Section 438 of the Code of Criminal Procedure can be made under Article 226 of the Constitution of India.

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It is, therefore, argued that the petitioner has a remedy to seek anticipatory bail and has already obtained regular bail in such cases.

Reliance is next placed on a decision of the Supreme Court in the case of ***Bimal Gurung vs. Union of India*** reported in ***(2018) 15 SCC 480***. It is argued that the instant case is not an extraordinary case calling for transfer of investigation. It is premature to assume that the petitioner **will** be implicated in a false case or a charge-sheet will invariably be filed.

It is also argued that the Court under Article 226 of the Constitution of India or under Section 482 of the Cr.PC should not interfere with an FIR except in the rarest of rare cases particularly when serious offences are alleged to have been committed and such offences also have national and international consequences. No high official of the State or the police has been named by the petitioner, at whose instance false cases have been foisted, nor has any bias been alleged.

Each of the complainants are private individual and hence, it cannot be said that the State has any axe to grind with the petitioner.

It is also argued that transfer is sought generally by a victim by a particular reference to Paragraph 53 of the ***Bimal Gurung*** decision (*supra*) and the accused petitioner cannot ask for the same.

This Court has carefully considered the arguments of the learned counsel of the petitioner and the learned Advocate General. This Court has noted the dicta of the Supreme Court in the case of ***Neeharika Infrastructure Pvt. Ltd. vs. State of***

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Maharashtra & Ors. reported in ***2021 SCC Online SC 315***
particularly paragraph 80 thereof.

The facts and circumstances of the instant case are substantially and completely different from the ***Neeharika Infrastructure Pvt. Ltd.*** decision (*supra*). This Court is of the view that the instant case may fall within the expression rarest of rare cases, mentioned at Paragraph 80 (iv).

The case of ***State of Telengana Vs. Habib Abdullah Jeelani*** reported in ***(2017) 2 SCC 779*** was referred to by the Supreme Court in the context of orders directly not to arrest until investigation is over, while dismissing applications under Section 482.

In the instant case, it is seen that the 13 FIRs based on private complaints have all been registered against the petitioner. The offences under which they have been registered have been more clearly enumerated in paragraph 9 of the writ petition.

As to whether the investigation should be transferred to the CBI from the State might in fact be a premature exercise, this Court is inclined to accept the arguments of the learned Advocate General.

However, having considered all the decisions cited by the learned Advocate General this Court sees a very rare and exceptional instance where 13 complaints having been filed immediately after the declaration of results in the recent assembly elections.

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The uncanny timing of the FIRs cannot be lightly brushed aside and are enough for this Court to consider passing interim order.

One also cannot brush aside the argument that the change of political colour by the petitioner is the ulterior reason behind the number of complaints being filed against the petitioner albeit by different persons.

It is also seen from the decision in paragraph 53 of the **Bimal Gurung** decision (*supra*) that transfer of investigation from the State to the CBI can also be sought by an accused as in the instant case. The relevant portion of the said paragraph is set out hereinbelow :-

“53. Most of the cases which were cited before us by the parties are the cases where this Court exercised jurisdiction under Article 32 in transferring the investigation at the instance of the victims. For a victim, the investigation in a case is of much significance. In the event, a proper investigation is not carried out and relevant evidence which would have been collected by due care and caution, is not collected, the victim is sure not to get justice on such faulty investigation. In case of faulty investigation, where an accused has been wrongly roped in, he has the right to seek all remedies before court of law for further investigation and a court of law is able to marshal all evidence and capable of discerning truth from evidence on record. Although as a principle, there is no fetter on an accused to move a court of law for transfer of investigation, but on the facts of this case as noted above, we do not think it to be a fit case where this Court may exercise jurisdiction under Article 32 to transfer the cases en masse to an independent agency. The present case cannot be said to be a case of individual's persecution by the State authority.”

(emphasis added)

It is indeed true that it is rather premature to come to any conclusion even prima facie that the investigation is likely to be prejudicial or biased at this stage. This court is conscious of the fact that normally freedom/liberty/bail cannot be granted to a person who is absconding, as laid down in the Lavesh decision (*supra*).

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As for argument of the State that when proclamation and attachment have been issued, a writ court under Article 226 or a Revisional Court under Section 482 or a prayer for anticipatory bail, should not normally be entertained. There is no absolute bar in that regard. It is also noted in the instant case that orders of proclamation or attachment have not been made as yet.

However, this Court definitely sees extraordinary circumstances in 13 successive complaints having been filed before one police station against the writ petitioner in a span of 30 days. Mala fide FIRs would normally attract the jurisdiction of the Court under the Code of Criminal Procedure but 13 successive FIRs would bring into focus, likely and violation of Article 21 of the Constitution. In the Bimal Gurung case (supra) it has been held that transfer of investigation can be made in cases where there is violation of fundamental rights.

As already stated above interference is called for in view of a present imminent and immediate threat of violation of Article 21 of the Constitution. The cases which call for interference are not restricted to involvement of high officials or accusation against other investigators or for bias.

In such a situation, this Court's power under Article 226 of the Constitution of India must and should be exercised to come to the aid of a citizen whose personal liberty is at threat.

For, inter alia, reasons indicated above, this Court is inclined to direct the Gaighata Police Station not to arrest the writ petitioner without the leave of this court. Particulars of all other FIRs against the petitioners shall be furnished to the petitioner by the State forthwith. The petitioner unconditionally

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undertakes before this court to cooperate in the investigations in all cases.

The State shall file affidavit-in-opposition to the writ application within a period of two weeks from date. Reply, if any, shall be filed by the writ petitioner within three days thereafter.

This matter shall be listed in the same position on **26.07.2021**.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)