

16.05.2024
Ct. No.34
dc/gsdas
Item No. 86

WPA 13815 of 2024

**Sri Abhijit Gangopadhyay & Anr.
-Versus-
The State of West Bengal & Ors.**

Mr. Rajdeep Mzumder.,
Mr. Billawadal Bhattacharyya
Mr. Moyukh Mukherjee
Mr. Pritam Roy
Mr. Anish Kr. Mukherjee
Mr. S. Bhattacharjee
Ms. Sagnika Banerjee
Ms. Aishwaryya Bazaz
Ms. Triparna Roy

...for the petitioners

Mr. Kishore Dutta, Ld. Advocate General
Mr. Amitesh Banerjee, Ld. Sr. Standing Counsel
Mr. Sirsanya Bandopadhyay, Ld. Jr. Standing Counsel
Mr. Rudrajit Sarkar
Mr. R.K. Ganguly

... for the State.

The petitioners have challenged the continuation of the proceedings being Tamluk P.S. Case No. 411 of 2024 dated 4.5.2024 under Sections 143/323/325/307/354B/379/427/506/109/34 IPC read with Sections 25/27 of the Arms Act.

Mr. Mazumder, ld. Advocate appearing on behalf of the petitioners, drew the attention of the Court to the contents of the FIR and also filed a Supplementary Affidavit drawing the attention of the court to the downloaded copy of the permission which was granted to the petitioner no.1 for taking out a rally in course of filing his nomination for 30- Tamluk Loksabha Constituency before the appropriate authority.

I have taken into account the nature of the allegations made in the letter of complaint addressed to the Inspector-in-charge of Tamluk P.S.

So far as the petitioner no.1 is concerned, there are allegations against him in the FIR of abetment.

Learned Advocate for the petitioners, additionally, submitted that so far as the petitioner no.2 is concerned, his name is appearing at the bottom in the list but no role has been described so far as the petitioner no.2 is concerned in the letter of complaint itself.

Learned Advocate for the petitioners has, apart from drawing the attention of the Court to the different circumstances, relied upon the judgment of the Hon'ble Supreme Court in *Salib @ Shalu @ Salim -vs- State of UP and ors.* reported in *2023 SCC OnLine SC 947*.

Drawing the attention of the Court to paragraph 28 of the said judgment, learned advocate submitted that an additional ground has been considered apart from the seven settled proposition in the case of *State of Haryana - vs- Bhajan Lal* reported in 1992 Supp(1) SCC 335 for the purposes of the present case.

Paragraph 28 of *Salib @ Shalu @ Salim -vs- State of UP and ors.* (supra) is set out as follows:

“28. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground

that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

Learned Advocate for the petitioners also drew the attention of the court to the observations made by the learned CJM, Tamruk, Purba Medinipur in its order dated 13.5.24. The details of which, at present, are not being

dealt with, but, would be considered at the appropriate stage.

Learned Advocate General appearing on behalf of the State drew the attention of the court to the averments made in the writ petition and emphasized that the contentions in the writ petition itself admits regarding the incident taking place. As such, there is no denial of the fact regarding the alleged offence taking place at the place of occurrence.

The attention of the court was drawn to the series of events set out in the writ petition and it was emphasized that at the stage of registration of the FIR, the primary consideration of the police authorities are to check whether a cognizable offence has been made out or not and, at that stage, even an incorrect allegation may not be possible to be justified, which may be unearthed in due process or course of investigation at the subsequent stage.

Having drawn the attention of the court to the series of events, which have been narrated in the writ petition itself, learned Advocate General emphasized that the judgments relied upon being *State of Haryana -vs- Bhajan Lal (supra)* and *Salib alias Shalu alias Salim (supra)* do not apply to the factual circumstances of the present case, particularly, to sub-paragraph 3 of paragraph 102 of *Bhajan Lal's* case as the said sub-paragraph refers to “uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same...” So if

the incident is admitted according to the State, it should be left to the investigating agency to collect the evidence in support of the same.

I have considered the submissions advanced on behalf of the petitioners as well as that of the State and also taken into account the observations recorded by the Learned Chief Judicial Magistrate, Tamruk, Purba Medinipur in his order dated 13.05.24, which is as follows:

“On perusal of the case diary I find that the IO has not examined the female victims. There was no prayer for examination of the female victims and recording their statements under Sec. 164 Cr.P.C.

The CD also does not reveal any such injury report and statement of the injured to say that there was assault upon them causing threat of murder.

There was no such material to say that there was used of fire arms to attract Sec. 27 of Arms Act. The videograph which has been seized by the IO was also watched by this court and do not find any such assault, attack or any provoking statement from any corner to say that the FIR named accused persons were involved. It further appears from the FIR that one of the FIR named accused persons is the candidate of ensuing Parliamentary Election. To arrest the FIR named accused, the police custody of this accused is ridiculous particularly when he is roaming around the jurisdiction of this police station for his election campaign.”

Another fact which has weighed with this court, at this stage, is the observations of the Hon'ble Supreme Court, which was taken into account in the case of *Arvind Kejriwal -vs.- Directorate of Enforcement* [Special Leave Petition (Criminal) No. 5154 of 2024]. Paragraph 8 of the said judgment refers to one of the considerations for

granting interim bail by the Hon'ble Supreme Court in the reported case. In fact, the Hon'ble Supreme Court took into account general elections to Lok Sabha where there is participation of 650-700 million voters out of an electorate of about 970 million voters who would cast their votes to elect the Government of this country for the next five years. Paragraph 8 of the said judgment is relevant for the purpose of the present case, at the present juncture, and as such, the same is set out hereunder:

“8. It is no gain saying that General Elections to Lok Sabha is the most significant and an important event this year, as it should be in a national election year. Between 650-700 million voters out of an electorate of about 970 million will cast their votes to elect the government of this country for the next five years. General Elections supply the vis viva to a democracy (Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others (1978) 1 SCC 405). Given the prodigious importance, we reject the argument raised on behalf of the prosecution that grant of interim bail/release on this account would be giving premium of placing the politicians in a benefic position compared to ordinary citizens of this country. While examining the question of grant of interim bail/release, the courts always take into consideration the peculiarities associated with the person in question and the surrounding circumstances. In fact, to ignore the same would be iniquitous and wrong.”

Additionally, in the same judgment, the Hon'ble Supreme Court took into account the previous judgments

of *Siba Shankar Das @ Pintu –vs.- State of Odisha & Anr.*, wherein the conditions imposed for not being involved in any political activities directly or, indirectly were struck down being considered to be breach of fundamental rights.

Reference was also made to *State of Andhra Pradesh –vs- Nara Chandra Babu Naidu*, wherein, in an interim order the condition of restraining the respondent from organizing or participating in public rallies and meetings thereby permitting him to participate in the political process was allowed.

Having considered the view of the Hon'ble Supreme Court in *Arvind Kejriwal (supra)* the observation of the Learned Chief Judicial Magistrate, Tamluk, Purba Medinipur in respect of the case diary produced before the said court on 13.05.2024, as well as the fact the petitioner no.1 is a contesting candidate from 30-Tamluk Parliamentary Constituency, I am of the opinion that so far as the petitioner no.1 is concerned, the observations of the Hon'ble Supreme Court in the case of *Arvind Kejriwal (supra)* squarely applies.

So far as the petitioner no.2 is concerned, the contents of letter of complaint addressed to the Inspector in-Charge do not reflect any overt act or complicity of the petitioner no.2, even his name is absent in the letter of complaint, except the list.

The State of West Bengal intends to use affidavit-in-opposition.

Let the affidavit-in-opposition be filed by 12th of June, 2024. Affidavit-in-reply thereo, if any, be filed within a week thereafter.

Let the matter appear under the same heading on 12th of June, 2024.

Pending hearing of this writ petition, *qua* the petitioners, the investigation of Tamluk P.S. Case No. 411 of 2024 dated 4.5.2024 be stayed till 14th of June, 2024.

All concerned parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of requisite formalities.

(Tirthankar Ghosh, J.)