

22.02.2024

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List - D/L

Sl. No. 21.

Ct. No. 238.

W.P.A. No.4742 of 2024

SANTU PAN

-VERSUS-

STATE OF WEST BENGAL AND OTHERS

Mr. Mahesh Jethmalani, Sr. Adv.,

Mr. Sandipan Ganguli, Sr. Adv.,

Mr. Ravi Sharma, Adv.,

Mr. Saket Shukla, Adv.,

Mr. Apalak Basu, Adv.,

Mr. Zoeb Cutlerywala, Adv.,

Mr. Joy Pareira, Adv.,

Ms. Smita Mukheerjee, Adv.,

Ms. Saheli Bose, Adv.

.....for the petitioner.

Mr. Kishore Datta, Ld. Advocate General,

Mr. Amitesh Banerjee, Ld. Sr. State Counsel,

Mr. Tarak Karan, Adv.,

Mr. Debanghi Dinda, Adv.

...for the State.

The petitioner, a journalist covering the incidents in Sandeshkhali, located in North 24-Parganas, West Bengal, was arrested by the police on the evening of February 19, 2024, following a complaint lodged by a local woman.

The complaint, filed with the Officer-in-Charge of the Sandeshkhali Police Station, alleged, inter alia, that on February 19, 2024, while she was not properly dressed and was having her food, the petitioner kicked the front door of her house and started creating a ruckus. When she peeked out, the petitioner began asking many objectionable questions. As she declined to answer, the petitioner started pulling her nightgown and verbally abused her with foul language. The petitioner cried and her sister-in-law came out. Thereafter, the petitioner, along with his cameraman, left the place. Following the said complaint, the Sandeshkhali Police Station registered an F.I.R. No.38 of 2024 dated February 19, 2024, under Sections 447/448/354/ 354C/ 509/ 506 /34 of the Indian Penal Code.

His bail prayer was turned down by the learned Additional Chief Judicial Magistrate (In-charge), Basirhat Court, on February 19, 2024. The learned Magistrate granted the prayer for the police custody by the Investigating Officer till February 23, 2024.

By filing this writ petition under Article 226 of the Constitution of India, the writ petitioner seeks to quash the proceedings of the aforesaid criminal case. He has also prayed for his release on bail.

Mr. Jethmalani, learned senior advocate appearing for the petitioner, has submitted that the entire proceeding suffers from malice. The first information report or the complaint, does not, prima facie, constitute any offence or make out a case against the accused. He argues that the FIR and the material collected in support of the same do not disclose commission of any offence and make out a case against the accused. He further argues that the criminal proceeding is manifestly attended with mala fide and is maliciously instituted with an ulterior motive.

Mr. Jethmalani further argues that in the present case, the highest alleged offence is punishable with imprisonment for less than seven years. Therefore, the police could not have arrested the petitioner without issuing a notice under Section 41(A) of the Code of Criminal Procedure, 1973.

He further argued that in dealing with a case for quashing of F.I.R., the High Court should not confine itself to the allegations made in the F.I.R. In frivolous or vexatious proceeding, the Court owes a duty to look into other attending circumstances emerging from the record of the case.

Mr. Jethmalani has argued that a prayer for bail and quashing the criminal proceedings by invoking

the jurisdiction of this Court under Article 226 of the Constitution of India are maintainable regardless of any alternative remedy.

To demonstrate that the allegations made in the F.I.R. are utterly false, the video recording of the alleged incident as recorded by the accompanying cameraman of the petitioner was played before this Court.

In support of his submission, Mr. Jethmalani, has relied upon the following judgments reported at **(2021) 2 SCC 427 (Arnab Manoranjan Goswami v. State of Maharashtra)**, **(1984) 3 SCC 161 (Bandhua Mukti Morcha v. Union of India)**, **(2022) 10 SCC 51 (Satender Kumar Antil v. Central Bureau of Investigation)** and the judgment passed in **Criminal Appeal No.2341 of 2023 (Mahmood Ali &Ors. V. State of U.P. & Ors.)**.

Conversely, Mr. Kishore Datta, learned Advocate General, has argued that the plain reading of the F.I.R. discloses cognizable offence. By making a reference to the judgment reported at **(2012) 4 SCC 1 (Lalita Kumari v. Government of Uttar Pradesh)**, it has been argued by Mr. Datta that it was obligatory on the part of the police to register an F.I.R. following the complaint lodged.

Mr. Datta has produced the case diary to demonstrate that the complainant in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973, corroborated the allegations made in the F.I.R.

Mr. Datta has argued that since a competent jurisdictional Magistrate has declined to grant bail to the petitioner by a judicial order, the same should be challenged by the petitioner in terms of the provisions of Code of Criminal Procedure, 1973. The jurisdiction of the Writ Court should not be invoked to interfere with a judicial order.

I am of the view that the petitioner should be granted bail and the present criminal case initiated against him should be stayed.

Before the learned Magistrate in the Court below, the Investigating Officer sought to justify the prayer for police custody to recover the photographs of the victim lady taken by the associate cameraman to “reconstruct a scene of crime.”

Fortunately, the entire incident of February 19, 2024, was recorded by the cameraman accompanying the petitioner. The videograph was produced before this Court and the same was played in the open Court in presence of the Investigating Officer of the case.

The videograph unequivocally shows that the petitioner and his cameraman were positioned outside the residential premises of the complainant. An interview with the complainant was conducted in the presence of another female resident keeping a reasonable distance. The questions posed during the interview were answered by the complainant. Subsequently, the petitioner and his cameraman exited the premises. Evidently, the petitioner never approached the complainant or the other female resident, let alone pulled the nightie of the petitioner. A thorough examination of the videograph dispels any doubts regarding the falsity of the allegations presented in the First Information Report (F.I.R.) or the statement provided under Section 164 of the Code of Criminal Procedure, 1973, by the complainant, confirming them to be unfounded and false. This Court has reviewed the videograph and the Investigating Officer has also acknowledged in open Court that the female interviewed was the complainant and the petitioner was the interviewer.

Though Mr. Datta joined issue with regard to the consideration of the videograph while dealing with this case for quashing of an F.I.R., I am of the clear view that this Court is not precluded from taking into consideration the said videograph in view of the

observation of the Supreme Court in **Criminal Appeal No.2341 of 2023 (Mahmood Ali &Ors. V. State of U.P. & Ors.)**. The relevant part of the said judgment is quoted below:

“12. 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.

13. In **State of Andhra Pradesh v. Golconda Linga Swamy**, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-

“5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. **When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.**

6. In **R.P. Kapur v. State of Punjab**, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) **where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.**

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....” (Emphasis supplied)”

I am also of the view that the Investigating Agency in compliance with the judgment of the Supreme

Court reported at **(2014) 8 SCC 273 (Arnesh Kumar v. State of Bihar)** ought to have issued a notice under Section 41-A of the Code of Criminal Procedure, 1973, against the petitioner when none of the alleged offence was punishable with the imprisonment for seven years or more.

The issue of maintainability of a writ petition with a prayer for bail and quashing of a criminal proceeding has been clearly answered by the Supreme Court in **(2021) 2 SCC 427 (Arnab Manoranjan Goswami v. State of Maharashtra)**.

“64. While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the precedents of this Court. These factors can be summarised as follows:

64.1. The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction.

64.2. Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses.

64.3. The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice.

64.4. The antecedents of and circumstances which are peculiar to the accused.

64.5. Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR.

64.6. The significant interests of the public or the State and other similar considerations.

65. These principles have evolved over a period of time and emanate from the following (among other) decisions : *Prahlad Singh Bhati v. State (NCT of Delhi)* [*Prahlad Singh Bhati v. State (NCT of Delhi)*, (2001) 4 SCC 280

: 2001 SCC (Cri) 674] ; *Ram Govind Upadhyay v. Sudarshan Singh* [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] ; *State of U.P. v. Amarmani Tripathi* [*State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] ; *Prasanta Kumar Sarkar v. Ashis Chatterjee* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] ; *Sanjay Chandra v. CBI* [*Sanjay Chandra v. CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] and *P. Chidambaram v. CBI* [*P. Chidambaram v. CBI*, (2020) 13 SCC 337 : (2020) 4 SCC (Cri) 528] .

66. These principles are equally applicable to the exercise of jurisdiction under Article 226 of the Constitution when the court is called upon to secure the liberty of the accused. The High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 CrPC. In the backdrop of these principles, it has become necessary to scrutinise the contents of the FIR in the case at hand. In this batch of cases, a prima facie evaluation of the FIR does not establish the ingredients of the offence of abetment of suicide under Section 306 IPC. The appellants are residents of India and do not pose a flight risk during the investigation or the trial. There is no apprehension of tampering of evidence or witnesses. Taking these factors into consideration, the order dated 11-11-2020 [*Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 1 SCC 802] envisaged the release of the appellants on bail.

J. Human liberty and the Role of courts

67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC “or prevent abuse of the process of any court or otherwise to secure the ends of

justice". Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post-Independence, the recognition by Parliament [Section 482 CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are

listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.”

The circumstances leading to the initiation and investigation of the case must be taken into account.

Sandeshkhali has recently garnered public attention across the country due to an incident involving the assault of Enforcement Directorate officials by aides of a local political leader, namely Shajahan Sheikh. The village has witnessed prolonged protests by local women, who allege and voice concerns about repeated sexual violations at gunpoint by certain local political leaders against women in Sandeshkhali. There are also serious allegations ranging from rape to atrocities against the

tribal population, who have reportedly been coerced into transferring their land to certain political leaders.

In the current situation in Sandeshkhali, the freedom of the press is crucial as it serves as the fourth pillar, alongside the executive, legislative, and judicial branches. This pillar must be allowed to function freely and independently, without any fear of reprisal or intimidation. It is through a free press that the public is informed and empowered, and that the government is held accountable.

Accordingly, the petitioner is directed to be released on bail upon furnishing a bond of Rs.500/- with one surety of like amount, to the satisfaction of the learned Additional Chief Judicial Magistrate, Basirhat, North 24-Parganas.

All further proceedings of Sandeshkhali P.S. case no.38 of 2024 dated February 19, 2024, under Sections 447/448/354/ 354C/ 509/ 506 /34 of the Indian Penal Code shall remain stayed till the disposal of this writ petition.

Let the affidavit-in-opposition be filed by the State within a period four weeks; reply thereto, if any, may be filed by the petitioner within two weeks thereafter.

List the matter after six weeks under the heading "Hearing".

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

(Kausik Chanda, J.)