

29.11.2021

Court No.29
Item No.7
(Rejected)

CRM 6887 of 2021

Saswata

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with Nandigram Police Station Case No. 224 of 2021 dated 13.05.2021 under Sections 143/147/148/149/323/325/326/302 of the Indian Penal Code.;

And

In the matter of : **Sk. Supiyan @ Suffiyan @ Supisan**
...Petitioner

Mr. Kishore Dutta, Sr. Advocate

Mr. Imitiaz Ahmed

Mr. Achintya Banerjee

Mr. Baiswanor Chatterjee

Mr. Tarun Chatterjee

Mr. Suman Dey

Mr. Diptendu Banerjee

Mr. Manoj Mondal

Mr. Soumen Chatterjee

Mr. Indumouli Banerjee

...For the Petitioner

Mr. Y.J. Dastoor, ASG

Mr. Phiroze Edulji

Mr. Samrat Goswami

...For the CBI.

Mr. Kallol Mondal

Mr. Rajdeep mazumder

Mr. Moyukh Mukherjee

... For the de facto complainant

The petitioner seeks anticipatory bail.

Learned senior advocate appearing for the petitioner submits that the petitioner is sought to be roped into the criminal complaint on the basis of a political vendetta. He submits that the Central Bureau of Investigation (CBI) took over the investigations in the month of August 2020. He submits that the petitioner responded to two notices issued by the CBI dated September 16, 2021 and September 30, 2021. Thereafter,

the CBI submitted charge sheet on October 5, 2021. The petitioner is not named in the chargesheet filed on October 5, 2021. However, the petitioner apprehends arrest, since according to him, the leader of the opposition took the name of ten persons who were to be arrested in the present police complaint. He further submits that the names were taken in the complaint in October 6, 2021 and subsequent thereto, some of the persons who were named by the leader of the opposition on October 6, 2021 were taken into custody by the CBI. There is an imminent threat of arrest of the petitioner. He submits that the CBI took into account a DVD containing two videos. The petitioner is not found in any of the two videos and, therefore, the CBI did not name the petitioner as the accused in the charge sheet submitted. He draws the attention of the Court to the contents of the case diary. He submits that the CBI is now seeking to take advantage of the statement that there are other unnamed persons noted in the charge sheet. He submits that the CBI did not take into account the call details recording of the petitioner's mobile or the tower location of the petitioner's mobile phone at the relevant time. He refers to the medical documents of the petitioner and submits that the petitioner was unable to attend the CBI in compliance to any notices issued subsequent to October 27, 2021 in view of the medical condition and in view of the protection granted by the Court.

Learned Additional Solicitor General (ASG) appearing for the CBI submits that the investigations were taken over by the CBI pursuant to the order of the Full Bench. Subsequent to the CBI taking over the investigation, the CBI filed the charge sheet to the extent possible at the material point of time within the statutory period required for filing of

the charge sheet. He submits that persons came forward subsequently and recorded statements under Section 164 of the Code of Criminal Procedure, implicating the petitioner amongst others. He refers to such statements recorded under Section 164 of the Code of Criminal Procedure. He submits that the atmosphere was vitiated prior to the CBI taking over the charge of the investigation. It is subsequent to the CBI taking over the investigations that the persons came forward to name the accused. He refers to the gravity of the offences and the involvement of the petitioner as appearing from the case diary.

Learned advocate appearing for the *de facto* complainant submits that the petitioner is an influential person. The State withdrew three murder cases against the person, immediately before the Assembly Election of 2021. A Public Interest Litigation was filed before the Division Bench. The Division Bench was pleased to reinstate the criminal proceedings. Against such order of the Division Bench, a Special Leave Petition was preferred before the Hon'ble Supreme Court. The Hon'ble Supreme Court directed the Division Bench to re-hear the matter.

The police complaint relates to post-poll violence of the last Assembly Election. There subsists an order of the Full Bench, directing the CBI to look into the cases of specified categories. The present police complaint falls within one of the categories to be looked into by the CBI. The CBI pursuant to the order of the Full Bench, took over the investigations. The CBI submitted a charge sheet on October 5, 2021 retaining the right of further investigation and filing a further charge sheet. In the charge sheet submitted on October 5, 2021, the CBI does

not name the petitioner as one of the accused. The CBI, thereafter, comes across statements recorded under Section 164 of the Code of Criminal Procedure as also the statement recorded under Section 161 of the Code of Criminal Procedure Code, implicating the petitioner herein as one of the principal persons involved in the incident. It is on such basis that the CBI opposes the prayer for anticipatory bail of the petitioner.

Considering the gravity of the offence and considering the materials in the case diary and considering the statement recorded under Section 164 of the Code of Criminal Procedure, implicating the petitioner in the incident and considering the fact that the CBI is conducting the investigation pursuant to the order passed by the Full Bench and considering the fact that the investigations are yet to be concluded, we are unable to grant anticipatory bail to the petitioner.

The application for anticipatory bail being CRM 6887 of 2021 is, thus, ***rejected***.

The undertaking recorded stands discharged.

(Debangsu Basak, J.)

(Bibahas Ranjan De, J.)