

CNR No: WBSP010140232023

Present: Subhra Som Ghosal

J.O Code: WB00984

Special Case No: 64 of 2023

Order No. 07, dated: 17-01-2024.

The case record has been put up today at the behest of the accused persons namely Sri Ananta Das and Smt. Arpita Mondal.

The accused persons namely Ananta Das and Smt. Arpita Mondal have appeared today and have filed a bail application. Vakalatnama has been filed on behalf of the accused persons. Certain documents have also been filed along with the bail petition.

The de facto complainant is present by filing hazira.

On call Ld. Advocate for the accused persons, the Ld. Public Prosecutor-in-charge and the Ld. Advocate for the de facto complainant are found to be present.

Hence the bail petition is taken up for hearing.

The Ld. Advocate for the accused persons at the very exordium submitted that in this case the basic dispute is between flat owners and the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has been misused by the de facto complainant through this proceeding. Pinning reliance on this aspect; it was vehemently argued that custody of the accused persons who have complied with notice under section 41A of the Criminal Procedure Code 1973 and have joined the investigation. It was further submitted that the accused persons are ready to surrender to any condition which will be imposed by this court and will appear on each and every subsequent dates. It was also argued that accused Ananta Das is a member of Schedule Caste and hence section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has no application.

The Ld. Public Prosecutor-in-charge raised cavil to such prayer.

The prayer for bail was vehemently opposed by the Ld. Advocate for the de facto complainant. It was argued by the Ld. Advocate for the de facto complainant that the accused persons are trying to evict the de facto complainant and his family members by way of constant torture and humiliation on the basis of his caste. It was also argued that the accused persons are very much influential and castigating the conduct of the Investigating Officer, it was submitted by the Ld. Advocate for the de facto complainant that in a case of this nature the Investigating Officer without ascertaining the facts and circumstances of the allegations and without examining all the witnesses present at the spot issued notice under section 41A of the Criminal Procedure Code 1973, which for the Ld. Advocate de facto complainant is absolutely illegal. On basis of these facts; the Ld. Advocate for the de facto complainant argued that if the accused persons are released on bail at this stage, in that event the entire course of investigation will be thwarted and will be reduced to mockery.

At the very outset it is required to be mentioned that in this case the de facto complainant has been afforded adequate opportunity to ventilate his cause against the bail application and during the course of hearing the Ld. Advocate for the de facto complainant was heard at length. Hence the avowed object of giving fair chance of hearing to the de facto complainant as per section 15 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has been duly complied with.

The CD was called for from the Investigating Officer and the CD has been produced. I have meticulously inspected the materials available in the CD.

At the very outset one aspect of this case needs to be settled. From the facts exposited before me as well as from the materials in the CD there is quandary over the proposition that the Investigating Officer has issued notice under section 41A of the Criminal Procedure Code 1973 to the accused persons and the accused persons appeared before the Investigating Officer in compliance to such notice. The Ld. Advocate for the de facto complainant has challenged such act of the Investigating Officer as illegal and motivated. In this context it is required to be mentioned that indictment of the accused persons is under section 509/506/504/114 of the Indian Penal Code, 1860 read with Section 3(1)(r)(s)(z)(za)(zc) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. If the entire allegations of the de facto complainant is taken to be sacrosanct then also the offences allegedly committed are punishable below seven years. In such background I find no



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illegality in the act of issuance of notice under section 41A of the Criminal Procedure Code 1973. I am emboldened to hold this in view of the observations of the Hon'ble High Court in ***Rajulapati Ankababu vs. State of Andhra Pradesh, (Telangana and Andhra Pradesh)*** reported in ***Law Finder Doc Id # 993811 : 2017 (3) Law Summary 316***. The observation of the Hon'ble Supreme Court runs in the following lines:

“33. Having regard to various provisions of the Cr.P.C., and the SC/ST Act referred supra, and the principle enunciated in Arnesh Kumar, I am of the considered view that section 41A Cr.P.C., 1973 in letter and spirit, is applicable to the offences committed under the SC/ST Act if the offence is punishable with imprisonment for a term which may be less than seven years or which may extend upto seven years, whether with or without fine.”

Hence in the facts and circumstances of this case, I find no illegality in the act of the Investigating Officer in issuing notice under section 41A of the Criminal Procedure Code 1973. It has transpired that the accused person has indeed complied with the notice under section 41A of the Criminal Procedure Code 1973 and were not arrested. Therefore their further detention was found to be not necessary by the I.O. and there is no allegations as regards non-compliance of the notice which was issued. Hence Section 41A sub-section (3) of the Criminal Procedure Code 1973 militates in favour of the prayer of the accused persons.

Moreover the statement of the witnesses have been recorded under section 161 of the Criminal Procedure Code 1973 and the statement under section 164 of the Criminal Procedure Code 1973 has also been recorded. From such statements I do not find any materials to conclude that there is indication of commission of any other graver offences. Considering such statements as well as the materials available in the CD, I do not find the detention of the accused persons to be either justified or necessary for the purpose of smooth investigation. Apprehension of the de facto complainant can be taken care of if the de facto complainant comes up with a prayer to that effect.

Hence considering every possible facet and based on the above delineations, the bail prayer is allowed. The accused persons may find interim bail on furnishing bond of Rs. 2,000/- each with two sureties of Rs.1000/- each to the satisfaction of the Ld. Chief Judicial Magistrate, South 24 parganas at Alipore i/d to J/C.

If on bail; the accused persons are directed to stay present on the date fixed and shall appear on each and every subsequent dates. If on bail the accused persons:

- (a) shall attend in accordance with the conditions of the bond executed as per this order and shall report before the Investigating Officer once a week,
- (b) shall not commit and/or indulge in any act similar to the offence for which they have been indicted in this case,
- (c) shall not directly or indirectly make any inducement, threat or promise to any person(s) acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

To date for Investigating Officer's report.

The Investigating Officer is directed to carry forward the investigation following the modalities of law and shall ensure proper safety and security of the de facto complainant.

Typed to the dictation directly;

corrected on the system.

Sd/-Subhra Som Ghosal

Additional District and Sessions Judge,

01st Court, Alipore,

South 24 parganas.

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01st Court, Alipore,

South 24 parganas.