

CNR No: WBSP010140232023

Present: Subhra Som Ghosal

J.O Code: WB00984

Special Case No: 64 of 2023

Order No. 08, dated: 30-01-2024.

The case record has been put up today at the behest of the accused persons namely Partha Sen, Sneha Sen, Santanu Sarkar and Swagata Sarkar.

The accused persons namely Partha Sen, Sneha Sen, Santanu Sarkar and Swagata Sarkar have appeared today and have filed a bail applications. Vakalatnamas have been filed on behalf of the accused persons. Certain documents have also been filed along with the bail petitions. Let those be kept with the case record.

The de facto complainant is absent and it was submitted by the Ld. Public Prosecutor-in-charge that notice was issued to the de facto complainant but she is yet to receive and service report from the police station.

On call Ld. Advocates for the accused persons and the Ld. Public Prosecutor-in-charge are found to be present.

At this stage it is required to be mentioned that in this case it was candidly submitted by the Ld. Public Prosecutor-in-charge the notice has been sent to the de facto complainant but the de facto complainant is not present. In this context I must hasten to articulate that deferment of hearing of bail application without compelling reasons results in violation of Article 21 of the Constitution of India. The right of the victim under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act has to be balanced with the right of an accused persons to have their bail application heard within a reasonable period of time. The bail processual framework has to be consistent with the requirements of Articles 14 and 21 of the Constitution of India. Good authority has long entrenched the right of an accused to seek hearing of his/her bail application in the charter of fundamental rights assured by the Constitution of India.

In this case the accused persons served copy of the bail petition upon the Ld. Public Prosecutor-in-charge on 24-01-2024 and it was clearly mentioned that bail petition is going to be moved on 30-01-2024. The Ld. Public Prosecutor-in-charge has submitted that she has sent notice to the de facto complainant. That being the case I find that there has been substantive compliance of Section 15 and Section 15A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

I must also hasten to articulate that the Hon'ble High Court in ***Sudip Mondal & Ors vs The State Of West Bengal & Anr [CRM (A) 2859 OF 2023]*** has made specific observations and the observations of the Hon'ble High Court are assuredly worthy of reproduction in the facts and circumstances of this case. The relevant part of the solemn order passed by the Hon'ble High Court runs in the following lines:

“25. Before proceeding to discuss the instant application for anticipatory bail on merit, we propose to lay down the gist of our discussion supra:

(i) The bar under Section 18 of the S.C. S.T. Act in respect of a petition for anticipatory bail under Section 438 Cr.P.C. is not absolute.

(i) (a) Such petition may be entertained and allowed in the event the court in session over the matter finds that no offence under the provisions of the S.C. S.T. Act is made out prima facie against the petitioner(s).

(ii) To find out the prima facie case no court should depend only on the F.I.R./complaint petition inasmuch as a meticulously drafted F.I.R./complaint petition may prejudice the accused and a casually drafted F.I.R. or complaint petition by a member of the S.C. S.T. community or on his/her instruction may prejudice the victim, if anticipatory bail is allowed or denied on reaching a prima facie conclusion regarding existence or nonexistence of prima facie case covered by the provisions of the S.C. S.T. Act.

(ii) (a) In reaching the conclusion regarding existence or non-existence of prima facie case, the court should strive to go through the entire C.D. to find out the circumstances attending and following the transaction.

(iii) This court while declining to entertain a petition for anticipatory bail may direct the petitioner(s) to surrender before the competent Court and move petition under Section 439



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Cr.P.C. In the event they surrender and move such petition, the competent court may also be directed to release them on interim bail if the offence committed by the accused is not heinous coupled with the offence enumerated in Section 3(1) of the S.C. S.T. Act.

(iii) (a) After hearing the Public Prosecutor/ Special Public Prosecutor regarding sufficiency of notice on the victim or his/her dependent as required under sub-Section 3 of Section 15A of S.C. S.T. Act, the petition for bail shall be taken up for final hearing for disposal on merit in accordance with law irrespective of the fact whether the victim or his/her dependant is present or not.

(iii) (b) When a persons surrenders to the jurisdiction of the competent court, it would be deemed that he has surrendered to the custody of the court and in that event a petition under Section 439 Cr.P.C. filed by him/her shall be competent and maintainable.

*(iii) (c) In a petition under Section 439 Cr.P.C. the competent court should address the question of bail in the light of Article 21 of the Constitution of India as done in other offences not covered by provisions of S.C. S.T. Act. **For offences covered under the S.C. S.T. Act same principle for bail should be adopted and applied. If offence is not heinous and especially an offence described under Section 3(1) of the S.C. S.T. Act interim bail as a rule should be granted awaiting sufficiency of notice under sub-Section 3 of Section 15A of the S.C. S.T. Act on the victim or his/her dependant.***

*(iii) (d) **Though notice to the victim or his/her dependant is mandatory, their presence in the proceeding is not mandatory.***”[emphasis supplied by me]

In view of the above discussion and the findings of the Hon'ble High Court, I find no predicament in taking up the prayer for bail for hearing on this date. Hence the bail petitions are taken up for hearing.

The Ld. Advocates 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 is not at all necessary, rather it will percolate injustice. 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.

The Ld. Public Prosecutor-in-charge raised objection to such prayer. It was argued by the Ld. Public Prosecutor-in-charge that the de facto complainant and his family members have been exposed to constant torture and humiliation on the basis of his caste and hence the bail prayer of the accused persons needs to be rejected.

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. 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 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

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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 persons have 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 after the previous accused persons were granted bail, nothing adverse has been reported by the Investigating Officer. It is also forthcoming from the case record that 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.

Hence considering every possible facet and based on the above delineations, the bail prayer is allowed. The accused persons namely **Partha Sen, Sneha Sen, Santanu Sarkar and Swagata Sarkar** 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,
- (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.

Let a copy of this order be also sent to the de facto complainant intimating him about this order. The Investigating Officer is further directed to inform the de facto complainant that he has every right to challenge this order and ventilate his stand while the accused persons prays for confirmation of the interim bail granted to then on this day.

To date i.e. 06-02-2024 for appearance and further order.

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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