

Form No. J(2)
Item No. DL/13
ARPAN – A.R. (CT)

In The High Court at Calcutta
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. NO. 11538 OF 2026

KAILESH KUMAR MISHRA AND ANOTHER

Vs.

THE STATE OF WEST BENGAL AND OTHERS

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BEFORE: THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

FOR THE PETITIONERS : Mr. Sirsanya Bandopadhyay, Adv.
Mr. Arka Kumar Nag, Adv.
Ms. Shrobana Sengupta, Adv.

FOR THE STATE : Mr. Rajdeep Mazumder, AAG
Mr. Dhiraj Kumar Trivedi, Sr. Adv.
Mr. Moyukh Mukherjee, Adv.

HEARING CONCLUDED ON : 22.05.2026

JUDGMENT ON : 22.05.2026

SAUGATA BHATTACHARYYA, J.:

1. Affidavit-of-service filed on behalf of the petitioners is taken on record.
2. Matter is heard in presence of the learned advocates representing the petitioners and the State respondents.

3. Petitioner no.1 was a candidate of All India Trinamool Congress from 169-Bally Assembly Constituency and petitioner no.2 is brother of petitioner no.1.
4. Petitioners have jointly approached this Court with the present writ petition challenging initiation of criminal prosecutions against them by the concerned police authority.
5. Mr. Sirsanya Bandopadhyay, learned advocate representing the petitioners has strenuously argued that though six FIRs were registered against the petitioners but those FIRs cannot survive the legal test. It is further submitted that most of the allegations levelled against the petitioners are concocted and fabricated giving rise to vexatious and frivolous criminal prosecutions requiring intervention of this Court in exercise of its high prerogative writ jurisdiction under Article 226 of the Constitution of India.
6. Mr. Rajdeep Mazumder, learned Additional Advocate General representing the State respondents has opposed this writ petition chiefly based on one out of six FIRs being Malipanchghora P.S. FIR No.110 of 2026 dated 27th April, 2026 under Sections 126(2)/ 115(2)/ 117(2)/ 304(2)/ 61(2) of Bharatiya Nyaya Sanhita, 2023 read with certain provisions of Arms Act. It is further submitted that leaving aside all other complaints lodged against the petitioners, the complaint in relation to Malipanchghora P.S. Case No.110 of 2026 dated 27th April, 2026 relates to cognizable offence requiring thorough investigation by the Investigating Agency.
7. Having considered the submissions made on behalf of the parties and on perusal of the writ petition, it appears that following criminal prosecutions are drawn up against the petitioners – Belur P.S. FIR No.81 of 2026 dated 14th May, 2026, Belur P.S. FIR No.82 of 2026 dated 14th May, 2026, Belur P.S. FIR No.83 of 2026 dated 15th May, 2026, Bally P.S. FIR No.64 of 2026 dated 26th April, 2026, Malipanchghora P.S. FIR No.110 of 2026 dated 27th April, 2026 and Liluah P.S. FIR No.228 of 2026 dated 13th May, 2026.

8. Court has perused the complaint dated 27th April, 2026 of the candidate of Bharatiya Janata Party from 169-Bally Assembly Constituency against the petitioners alleging commission of cognizable offence.
9. At this stage, Court is not required to enter into the veracity of allegations of commission of offence rather Investigating Agency is required to be permitted to look into the allegations made by the *defacto* complainant in connection with Malipanchghora P.S. Case No.110 of 2026 dated 27th April, 2026.
10. Though it has been argued on behalf of the petitioners that leaving aside criminal prosecution being Malipanchghora P.S. Case No.110 of 2026 dated 27th April, 2026 allegations in other criminal prosecutions are concocted and fabricated giving rise to vexatious and frivolous criminal prosecutions but once it is found that one of the complaints requires investigation by the Investigating Agency, this Court is not inclined to grant protection to the petitioners as sought for in the present writ petition.
11. In this regard, reliance is placed on paragraph 33.16 of the judgment of the Hon'ble Supreme Court reported in **(2021) 19 SCC 401 (Neeharika Infrastructure Private Limited vs. State of Maharashtra and Others)**. Paragraph 33.16 runs *infra*:-

“33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 CrPC before the competent

court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India."

12. In aforesaid consideration and in view of availability of remedy to the petitioners to approach the appropriate forum under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, Court is not inclined to interfere with the present writ petition and same stands dismissed.
13. However, this order shall not preclude the petitioners to take steps, in accordance with law.
14. Learned advocate representing the State respondents has filed four communications of the concerned police authorities dated 21st May, 2026 and 20th May, 2026 before this Court and same are taken on record. Copy of these communications shall be handed over to the learned advocate representing the petitioners in course of this day.
15. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(SAUGATA BHATTACHARYYA, J.)