

In The High Court at Calcutta

CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

W.P.A. 15359 OF 2026

ICHINI SOMENATH SHYAM @ MLA SOMNATH
SHYAM

VS.

THE STATE OF WEST BENGAL AND OTHERS

.....

Mr. Shounak Mondal, Adv.

...For the Petitioner

Mr. Billwadal Bhattacharyya, AAG
Mr. Suryaneel Das, AGP
Mr. Atanu Basu, Adv.
Mr. Vaibhav Prakash, Adv.

...For the State

Mr. Pritam Majumder, Adv.
Mr. Subhojit Purkait, Adv.

...For the Respondent No.5

1. Affidavit-of-service filed on behalf of the petitioner is taken on record.
2. Matter is heard in presence of the learned advocates representing petitioner, State respondents and respondent no.5.
3. By presenting this writ petition, *inter alia*, petitioner has prayed for quashment of criminal prosecution being Barrackpur P.S. Case No.79 of 2026 dated 10th June, 2026 under Sections 308/ 49/ 61(2) of Bharatiya Nyaya Sanhita, 2023.
4. Learned advocate representing the petitioner submits that complaint lodged against the petitioner needs to be looked into for coming into a conclusion whether a case is made out warranting interference or not.
5. Mr. Billwadal Bhattacharyya, learned Additional Advocate General representing the State respondents has opposed this writ petition on the count that unless a case is made out alleging violation of Fundamental

Rights, writ court while exercising jurisdiction under Article 226 of the Constitution of India may not entertain writ petition seeking quashment of criminal prosecution.

6. Having considered the respective submissions made on behalf of the parties, it appears that aforesaid criminal prosecution has been initiated against the petitioner based on the complaint lodged and investigation is at the nascent stage. At this stage, this Court while exercising jurisdiction under Article 226 of the Constitution of India is not required to find out veracity of the allegations when facts are hazy.
7. 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."

8. It is trite that jurisdiction of this Court while exercising power under Article 226 of the Constitution needs to be exercised with circumspection when prayer is made for quashment of criminal prosecution; it is not a routine procedure.
9. Petitioner has an alternative remedy available to approach appropriate forum seeking pre-arrest bail.
10. In aforesaid conspectus writ petition is not entertained and same stands dismissed.
11. However, this order shall not preclude the petitioner to approach appropriate forum in pursuit of remedy.
12. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(SAUGATA BHATTACHARYYA, J.)