

WPA 23716 of 2024

**Kalatan Dasgupta
Vs.
The State of West Bengal & Ors.**

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Sujit Mitra
Mr. Uday Sankar Chattopadhyay
Mr. Shanti Bhowmik
Mr. Faiyaz Ahmed Khan
Mr. Arup Bhattacharya
Mr. Samim Ahamed
Mr. Aitabha Ghosh
Mr. Maloy Bhattacharya
Mr. Tapas Maity
Mr. Siuddhartha Sankar Mondal
Mr. Rajit Lal Mitra
Mr. Sabyasachi Chatterjee
Mr. Sudipta Sengupta
Mr. Chandan Hussain
Mr. Upendra Kumar Roy
Mr. Prasanta Bishal
Mr. Arnab Sinha
Mr. Sattavick Majumder
Mr. Sakya Maity
Mr. Soumya Dasgupta
Mr. Nazibuddin Siddiqui
Mr. Arka Maiti
Mr. Firdous Samim
Ms. Saloni Bhattacharya
Ms. Gulsanwara Pervin
Mr. Arka Ranjan Bhattacharya
Mr. Sayan Banerjee
Mr. Enamul Islam
Ms. Ambiya Khatun
Ms. Debolina Sarkar
Ms. Gopa Biswas
Ms. Nabanita Chatterjee
Ms. Arpita Dhar
Mr. Aniket Sen
Mr. Arka Nandi
Mr. Amartya Basu
Mr. Arghya Banerjee
Ms. Anjana Mehboob
Ms. Anindita Roychowdhury
Mr. Arckajyoti Kundu
Ms. Satabdi Das
Mr. Pintu Karar
Mr. Akash Deep Mukherjee

... .. for the petitioner

Mr. Kishore Datta, AG
Mr. Amitesh Banerjee, SSC
Mr. Sirsanya Bandhopadhyay, JSC
Mr. Biswabrata Basu Mallick
Mr. Debangshu Dinda

... .. for the State

1. The petitioner, represented by Mr. Bikash Ranjan Bhattacharya, Learned Senior Counsel, is a prominent leader of the Democratic Youth Federation. He has been wrongfully implicated in a politically motivated criminal case, registered as Electronic Complex Police Station Case No. 173/24 on 13th September, 2024, under various provisions of the Bharatiya Nyaya Sanhita, 2023 (BNS), including Sections 224, 352, 353(a)(b)(2), 351(2), 196, and 61. The petitioner has actively participated in peaceful demonstrations opposing the State authorities' failure to ensure workplace safety for women. This protest gained momentum after the tragic rape and murder of a postgraduate trainee doctor at R.G. Kar Medical College and Hospital on August 9, 2024. Along with other members of civil society, the petitioner has led the movement, demanding justice for the victim and transparency in the investigation. The investigation was later transferred to the Central Bureau of Investigation (CBI) by an order of the Hon'ble High Court.

2. On 13th September 2024, at approximately 14:15 hours, Sub-Inspector Preetam Singh of the Electronic Complex Police Station received information that one Sanjib Das had spoken to the petitioner, Kalatan

Dasgupta, over the phone about organizing a violent attack at Swastha Bhawan, Salt Lake, Sector V, Kolkata, where protests were taking place. The alleged attack included plans to target public servants, specifically doctors. Based on this information, call diary records were retrieved, and a pen drive containing the conversation and its transcript was obtained. Subsequently, a case was registered against both, one Sanjib Das and the petitioner.

3. The petitioner herein assails the illegal actions of the respondent authorities, specifically the Bidhannagar Police Commissionerate (Respondent No. 3), in effectuating his arrest in blatant disregard of procedural safeguards. The petitioner asserts that the arrest is in direct contravention of the legal principles enunciated by the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar*** reported in **(2014) 8 SCC 273**, which prescribes strict adherence to procedural protocols for arrests in cases involving offenses punishable by imprisonment of up to seven years. It is further submitted that all charges mentioned in the FIR, save one, are bailable and non-cognizable under the Bharatiya Nyaya Sanhita, 2023. The solitary non-bailable charge carries a maximum sentence of three years, thus necessitating compliance with the guidelines in ***Arnesh Kumar (supra)***, as the threshold for a custodial arrest had not been met. Moreover, the said non-bailable offense was subsequently included in the

seizure list, and as such, the respondent police authorities could not have added this section without prior permission or an order from the learned Magistrate, thereby committing a gross violation of procedural mandates, including the issuance of notice under Section 35 of the BNSS, 2023, as well as affording the accused a prior opportunity to respond.

4. It has been further submitted that no prior voice sample match was conducted, moreover, the first information report or the complaint, does not, prima facie, constitute any offence or make out a case against the accused. The FIR and the material collected in support of the same do not disclose commission of any offence and make out a case against the accused. The criminal proceeding is manifestly attended with mala fide and is maliciously instituted with an ulterior motive. In the present case, the highest alleged offence is punishable with imprisonment for less than seven years. Therefore, the police could not have arrested the petitioner without issuing a notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Furthermore, there was no credible evidence establishing the petitioner's involvement in the alleged conspiracy. The arrest also violated the Hon'ble Supreme Court's directive dated *20th August, 2024*, which specifically instructed the State to exercise restraint in dealing with peaceful protests.

5. Additionally, it is argued that the Respondent authorities have deliberately attempted to damage the petitioner's reputation by leaking unverified audio recordings to political figures and the media, despite the fact that neither the petitioner nor one Sanjib Das had recorded said audio, as a keypad mobile, incapable of supporting audio recording mechanisms, was recovered during the seizure. The dissemination of such recordings occurred without conducting requisite forensic analysis or obtaining proper certification as required under Section 63 of the Bharatiya Sakshya Adhinyam, 2023 (BSA). The petitioner's detention was marred by procedural lapses, including the absence of an arrest memo, delayed communication to his family and falsified details concerning the location of his arrest. In light of these violations, the petitioner seeks immediate relief from unlawful detention and protection from further harassment.

6. Mr. Kishore Datta, Advocate General appearing on behalf of the respondent authorities respectfully submits that the arrest of the petitioner was lawful and in compliance with Section 35 of the Bharatiya Nyaya Sanhita, 2023 (BNSS), which empowers the authorities to arrest any person without the issuance of prior notice, irrespective of the fact that the alleged offense carries a punishment of less than seven years. It is further contended that the respondent authorities, acting upon

credible intelligence received from their sources, were informed of a potential threat to public safety, specifically the possibility of a massacre during the demonstration by junior doctors in front of the Swastha Bhavan. Consequently, the respondents reviewed the call records of the petitioner and one Sanjib Das, which led to their lawful arrest.

7. In response to the Court's inquiry, it is further contended by the state that the petitioner's continued detention is imperative for the purposes of the ongoing investigation, as additional evidentiary factors and categories require comprehensive scrutiny and interrogation. The petitioner has provided his statement admitting his guilt and has voluntarily unlocked his mobile device, which was subsequently seized by police authorities. The respondent authorities assert that their actions were conducted within the bounds of statutory authority and in furtherance of public order and safety, thereby contesting any relief sought by the petitioner at this juncture. The State further submits that all requisite procedural measures were adhered to, including the deployment of appropriate police personnel under the direct supervision of the Deputy Commissioner of Police, Bidhannagar, to ensure the protection of students at the demonstration site.

8. Learned Advocate General files report and relies on the Supreme Court in ***Kartar Singh v. State of Punjab***

reported in **(1994) 3 SCC 569** has laid down the following:

“40...‘359.... If the High Courts entertain bail applications invoking their extraordinary jurisdiction under Article 226 and pass orders, then the very scheme and object of the Act and the intendment of Parliament would be completely defeated and frustrated. But at the same time, it cannot be said that the High Courts have no jurisdiction. Therefore, we totally agree with the view taken by this Court in Abdul Hamid Haji Mohammed that if the High Court is inclined to entertain any application under Article 226, that power should be exercised most sparingly and only in rare and appropriate cases in extreme circumstances. What those rare cases are and what would be the circumstances that would justify the entertaining of applications under Article 226 cannot be put in straitjacket.”

9. It has been reiterated by the Hon'ble Supreme Court in **Usmanbhai v. State of Gujarat**, reported in **(1998) 2 SCC 271**, that the exclusion of the High Court's jurisdiction under Sections 439 and 482 of the Code of Criminal Procedure squarely applies to Article 226 of the Constitution. Reliance was further placed on **Narcotics Control Bureau v. Kishan Lal**, reported in **(1991) 1 SCC 705**. It was also submitted that, as far back as **in Waryam Singh v. Amarnath, AIR 1954 SC 215**, this Court had observed that the power of superintendence conferred by Article 227 is to be exercised with utmost

restraint and only in exceptional cases, specifically to ensure that subordinate courts operate within their jurisdiction and authority, and not for the purpose of correcting errors. Consequently, the High Court should not be permitted to entertain petitions challenging the rejection of bail under such circumstances.

10. Heard learned counsel for the parties at length.

11. In *State of Gujarat v. Mohanlal Jitmalji Porwal and Anr.*, reported in **(1987) 2 SCC 364** the Hon'ble Supreme Court of India dealt with the interpretation of "reasons to believe" under various statutes. The Court held that the expression "reasons to believe" does not mean a purely subjective satisfaction or arbitrary decision. It must be based on objective grounds, with rational and credible material, although not necessarily conclusive evidence. The belief must be in good faith, and there must be a reasonable basis for the suspicion or belief that an offense has been committed. The Court further emphasized that such a standard prevents misuse of power and ensures that authorities do not act arbitrarily. In the present case there is no "suspicion to believe" that the petitioner is involved in any illegal activity as the FIR and the material collected in support of the same do not disclose commission of any offence and make out a case against the petitioner.

12. The Hon'ble Supreme Court in *Arnesh Kumar (supra)* held:

“5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police have not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

13. In ***Arnab Manoranjan Goswami v. State of Maharashtra and others*** reported in **(2021) 2 SCC 427** the Hon'ble Supreme Court took note of the factors which are to be considered while considering application for bail under Article 226 of the Constitution viz.

A. *The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of conviction.* The petitioner has been booked under offences carrying punishment of imprisonment for less than seven years.

B. Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses. Here the complainant is the police officer and the petitioner is not in a position to give out threat to the police.

C. The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice. The petitioner has completed his graduation and is the editor of a magazine, therefore, the presence of the accused can be secured by imposing reasonable conditions at the time of grant of bail.

D. The antecedents and circumstances which are peculiar to the accused. There is no known criminal antecedent of the accused as of now.

E. Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR. The complaint filed by the Sub-Inspector and the remand report prima facie have procedural defects. (FIR not annexed with the report filed by the State)

F. The significant interest of the public or the State and other similar considerations. To uphold and restore the faith of the public in the judiciary the FIR named accused person is liable to be released on bail.

14. It is evident that arrest and detention was not carefully scrutinized to avoid unnecessary infringement on personal liberty. The petitioner, with no prior criminal

record and no significant risk of fleeing or tampering with evidence, has been in custody since 14th September, 2024. Given the absence of any further need for custodial interrogation and the relatively minor nature of the alleged offense, this Court finds it appropriate to grant bail, ensuring that due legal process is upheld while safeguarding the petitioner's fundamental rights.

15. The petitioner is already in custody on and from 14th September, 2024 and the police authorities have recorded his statements under section 180 of BNSS, 2023. Therefore, this Court is of the opinion that there is no requirement of any further custodial interrogation of the charges levelled against the petitioner.

16. Accordingly, the petitioner is directed to be released on bail upon furnishing a bond of Rs. 500/- with one surety of like amount, to the satisfaction of the learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas.

17. The respondent authorities are restrained from taking any coercive action against the petitioner in connection with the subject case where he has been arrested or any other case which has been or may be registered against him without the leave of the Court.

18. It is hereby clarified that the observations made hereinabove with respect to Electronic Complex Police Station Case No. 173/24, dated 13th September 2024, registered under various provisions of the Bharatiya

Nyaya Sanhita, 2023, including Sections 224, 352, 353(a)(b)(2), 351(2), 196, and 61, are solely in relation to the grant of interim protection/stay afforded to the petitioner pending the final adjudication of the present writ petition. It is further directed that the investigation in the aforementioned case shall proceed without any impediment. However, as the petitioner has already provided his statement and his mobile phone has been seized, he shall not be involved further in the investigative proceedings without the leave of this Court.

19. Let the affidavit-in-opposition be filed by the State within a period four (04) weeks, reply, if any, may be filed by the petitioner within four weeks thereafter.

20. Let this matter again appear in the list on 18th November, 2024 under the heading "Hearing".

21. All parties shall act on the server copy of this order duly obtained from the official website of this Court.

(Rajarshi Bharadwaj, J.)