

30.08.2024.

Sl. No.02(supp).
Ct. No.14.

**In The High Court At Calcutta
Constitution Writ Jurisdiction
Appellate Side**

WPA 22026 of 2024

Anjali Lahiri

Vs

The State of West Bengal & Ors.

Mr. Rajdeep Mazumder,
Mr. Moyukh Mukherjee,
Mr. Koustav Bagchi,
Mr. Koustav Lal Mukherjee,
Ms. Sagnika Banerjee
.....for the petitioner.

Mr. Kishore Dutta, Sr. Adv. Ld. AG,
Mr. Amitesh Banerjee,
Mr. Debangshu Dinda.
.....for the State.

The writ petition has been moved by obtaining leave in the first sitting of the Court citing urgency.

The son of the petitioner has been arrested and is in custody in connection with Maidan Police Station case no. 35 of 2024 dated 27th August, 2024 under Sections 189/191 (3)/ 190/ 121 (1)/ 132/ 109/ 326 (1)/ 161 (2) of the Bharatiya Nyaya Sanhita, 2023 read with Section 3 of the Prevention of Damage to public property read with Section 9 of the West Bengal Maintenance of Public Order Act.

It has been averred in the petition that several FIRs have been registered against her son within a

short period of time with a view to entangle her son in criminal cases to harass him unnecessarily as he is taking active part in organizing protest rallies against the gruesome and brutal rape and murder of a young lady doctor of RG Kar Hospital on 9th August, 2024.

Apart from the aforementioned case, her son has been arraigned as accused in the New Market Police Station case no 114 of 2024 dated 27th August, 2024 under Sections 189/ 324 (2)/ 61 (2)/ 190/ 121 (1)/ 132/ 285 of the Bharatiya Nyaya Sanhita, 2023 read with Section 9 of the West Bengal Maintenance of Public Order Act. He has also been named as accused in respect of FIR lodged before the Jorasanko Police Station. The petitioner is not aware of the details of the case registered against her son before the Jorasanko Police Station.

The complaint in connection with which the petitioner has been arrested is yet to reach the hand of the petitioner. The complaint in connection with the New Market Police Station has been placed on record.

It appears therefrom that a complaint was lodged by the Sub Inspector of the New Market Police Station on 27th August, 2024 alleging that the son of the petitioner along with other around 150 agitators assembled at Jawharlal Nehru Road and S.N. Banerjee Road crossing commonly known as Dorinna Crossing under the banner of Paschim Banga Chhatra

Samaj and called for Nabanna Abhijan. They unlawfully assembled there without any permission, blocked the road and disrupted normal vehicular and pedestrian movement. They raised slogans over the issue of the RG Kar Hospital incident. They were violent. The police repeatedly appealed not to break the law and order situation and continue peaceful protest but to no remedy.

Some agitators damaged flexes of TMC party affixed in and around the vicinity of the said spot. They endangered public safety and tranquility. Some agitators conspired and became furious and deterred on-duty police personnel from discharging (wrongly mentioned as discarding) their lawful duties. They physically assaulted the police on duty for which the police sustained injuries and were taken to SSKM Hospital for medical treatment. One of the agitators was arrested on spot.

The petitioner has averred that on 26th August, 2024 in a press meeting her son expressed his idea of conducting a peaceful protest march on 27th August, 2024 by the students seeking justice in connection with the RG Kar incident. Her son intended to peacefully protest against the mala fide action of the State police. A peaceful protest was organized and led by her son on 27th August, 2024 to the State Secretariat.

In the evening of 27th August, 2024 when her son was outside a reputed media broadcasting house after participating in a panel discussion, he was detained by the police of the Maidan Police Station and was taken into custody. A prayer for bail was moved on behalf of her son which stood rejected by the criminal Court.

The petitioner, inter alia, prays for quashing the FIR lodged against her son and further prays to release her son from custody.

It has been submitted that there is no direct evidence against her son for causing any destruction of public or private property. The petitioner claims that her son is innocent and no way connected with any offence, far less, offences mentioned in the complaint. He has been falsely implicated in the criminal cases.

It has been submitted that the right to life and liberty of her son has been infringed by the State.

The petitioner relies upon the guidelines laid down by the Hon'ble Supreme Court for grant of bail under Article 226 of the Constitution in the matter of ***Arnab Manoranjan Goswami vs. State of Maharashtra & Ors.*** reported in ***(2021) 2 SCC 427*** paragraphs 64 and 67.

Reference has also been made to the order dated 28th February, 2024 passed by a coordinate Bench of this Court in WPA 5242 of 2024 (***Bikash Singh vs. State of West Bengal & Ors.***).

The petitioner draws attention of the Court to the order dated **22nd August, 2024** passed by the Hon'ble Supreme Court in **SMW (Crl) No. 2 of 2024** wherein the Court directed that peaceful protest should not be disturbed or disrupted and the State shall not take any precipitate action against those who are peacefully protesting against the incident which took place at RG Kar Medical College Hospital.

Learned Advocate General opposes the prayer for bail of the FIR named accused. It has been submitted that the accused played an active role in leading a procession which turned out to be extremely violent causing destruction of public and private property. On-duty police officers were physically attacked. No permission was sought for holding the rally despite communication made by the Joint Commissioner of Police on 24th August, 2024. The petitioner made inflammatory speeches which agitated the protestors leading to complete breakdown of the law and order situation.

It has been submitted that as the mother has admitted that the rally was led by her son, accordingly, her son should be made accountable for

the offences and the criminal activities which took place during the rally.

Learned Advocate General has referred to the direction passed by the Hon'ble Supreme Court on 22nd August, 2024 in SMW (CrI) No. 2 of 2024 (supra) permitting the State to exercise lawful regulatory powers in connection with the peaceful protests held against the unfortunate incident.

Provisions of the Police Act, 1861 have been placed particularly Sections 30, 30A, 31 and 32. It has been argued that the law requires an application to be made for obtaining license for conducting any assembly or procession on public roads/ streets/ thoroughfares and to prescribe the route and the time at which such procession may pass.

In case of violation of the conditions of license, the police have the right to stop such procession. It is the duty of the police to maintain order on public roads/ street/ thoroughfares and at other public places. Any person violating or disobeying the aforesaid shall, on conviction, be liable to pay fine.

Prayer has been made to afford opportunity to the State to file affidavit in opposition dealing with the averments made in the writ petition.

I have heard and considered the submissions made on behalf of both the parties and have perused the materials placed before this Court.

On a query from the Court as to whether the organization or the association which the son of the petitioner is representing is a registered one or not, it has been candidly submitted by the learned advocate for the petitioner that 'Paschim Banga Chhatra Samaj' is not a registered association. It is only a group of students who have voluntarily and spontaneously joined to protest against the incident of rape and murder in the RG Kar Hospital. There is no definite number of members of the said association. Students of various colleges, universities, courses, streams have simply joined in the protest. The son of the petitioner is merely one of the protestors. He was severely disturbed by the incident and became vocal in the marches led by the protestors.

A communication dated 24th August, 2024 by the Joint Commissioner of Police, Headquarters, Kolkata being memo no 272/HQ/C has been placed by the learned advocate representing the State. It appears that a letter was addressed to the son of the petitioner and two others that it has come to the knowledge of the police that a press conference was held on 23rd August, 2024 by the members of the Paschim Banga Chhatra Samaj disclosing that a protest event called Nabanna Abhijan has been planned on 27th August, 2024 and a significant number of people from various parts of the State are

being called to participate. Multiple social posts were made encouraging mass mobilization towards Nabanna which is a highly sensitive area with restrictions imposed under 163 BNSS. Request was made to apply for permission to organize the protest to facilitate peaceful protest.

Certain details were sought for, namely, (1) name and contact information of the organizers, (2) gathering points, (3) estimated number of participants at each gathering point, (4) the planned route for any procession from the gathering points, (5) the nature and expected duration of the programme, (6) a list of volunteers, (7) the number of vehicles transporting participants (with details by point) so that appropriate parking and traffic arrangements can be made and the designated contact person for such programme to ensure effective coordination.

Though the petitioner did not give a formal reply to the aforesaid memo dated 24th August, 2024, but one of the addressees of the subject memo made an email communication in response to the said memo. It was mentioned that a non political and non violent rally would be held on 27th August, 2024 to protest the RG Kar incident. The rally would march towards Nabanna. The students as well as the general public irrespective of caste, creed, religion, political identity

etc. would be a part of the rally. The rally would be a democratic and a non violent protest.

It was intimated that the addressee learnt from reliable sources that miscreants engaged with the ruling dispensation of the State would try and use tactics to defame the students and general public by using violent and other malicious means. Tactics would be adopted to attack the protestors and police personnel to defame the society. Request was made to take steps to avoid any undesirable situation.

The memo dated 24th August, 2024 and the response dated 26th August, 2024 makes it clear that the police was well informed about the protest rally scheduled to be held on 27th August, 2024. The details sought for by the police could not have possibly been provided by the son of the petitioner being one of the addressees of the subject memo.

Admittedly, Paschim Banga Chhatra Samaj does not have a legal existence. It is a spontaneous bond created amongst the student fraternity supported by the public at large who got anguished by the RG Kar incident. The protest has spread across the entire society and the nation. It is absolutely impossible for the addressee to fix up a figure to ascertain and disclose the details sought for. The police ought to have appreciated that the association is not an

organized one. None could have anticipated such huge response at various parts of the State.

Had the RG Kar incident not occurred, there would not have been the existence of the Paschim Banga Chhatra Samaj. Thousands of common people joined the protest rally. The status of the protestors cut through all barriers and boundaries. It cannot be said with certainty that it is only at the call of the son of the petitioner there had been such huge turn out on the public streets/ roads and thoroughfares. The agitators and the protestors were out in the streets seeking justice.

The son of the petitioner may have played an active role and may have been a bit more vocal than the other protestors. The same does not ipso facto mean that the son of the petitioner is the leader of the rally that took place throughout the State and that he ought to be held responsible and made accountable for any offence which took place at the site of the rally. The addressee of the letter anticipated that miscreants may commit illegal act during the rally to defuse the protest and, accordingly, request was made to the police to avoid any such situation.

The protests are going on continuously from the very next date of the incident. The State administration including the police is well aware of the same. The authorities ought to have handled the issue

in a more sensitive manner rather than target the protestors to prevent them from continuing their agitation. The authorities ought to appreciate that the protests are more in the form of a social uproar against the unfortunate incident at RG Kar. Such type of public dissent is required to be dealt with in a matured manner and not by unleashing force upon the protestors.

The Hon'ble Supreme Court took suo motu cognizance of the incident and passed several directions. The Court was alive to the fact that protests are going on against the incident throughout the country. The Court categorically made it clear that the peaceful protest should not be disturbed or disrupted and the State was restrained from taking any precipitate action against the peaceful protestors.

It is common knowledge that it does not take much time for a peaceful protest to turn violent. There may be various factors for such a change in the nature of protest. It is always open for the police to take steps to regulate the protest. The Hon'ble Supreme Court permitted the police to exercise their regulatory powers. It will be absolutely improper if in the guise of exercising regulatory power, indiscriminate arrests are made to create fear and terrorize the protestors by keeping them behind bars.

In Arnab Manoranjan Goswami (supra) 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.

1. *The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of conviction.* The son of the petitioner has been booked under offences carrying punishment of imprisonment for less than seven years but for the charge of murder where punishment is imprisonment for more than seven years.

2. *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.

3. *The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice.* The son of the petitioner has completed his Masters in Business Administration (MBA) in the year 2023 and the presence of the accused can be secured by imposing

reasonable conditions at the time of grant of bail.

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

5. *Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR.* The FIR in connection with which the son of the petitioner has been arrested is yet to be brought on record.

6. *The significant interest of the public or the State and other similar considerations.* The son of the petitioner appears to be an absolutely insignificant character who does not hold any position of power or influence in the massive cry for justice in the aftermath of the RG Kar incident. To uphold and restore the faith of the public in the judiciary the FIR named accused person is liable to be released on bail.

The son of the petitioner is already in custody on and from 27th August, 2024. The police must have recorded his statements by now.

I am of the opinion that there is no requirement of any further custodial interrogation of the charges

leveled against him. The son of the petitioner is directed to be released from custody positively by 2 p.m. on 31st August, 2024.

The respondents are restrained from taking any coercive action against the son of 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.

The respondent authorities are directed to file affidavit in opposition by 20th September, 2024. Reply, if any, by 4th October, 2024. The parties are granted liberty to mention the writ petition for hearing before the regular Bench.

It is made clear that the observations made hereinabove are only in connection with grant of interim protection to the son of the petitioner. The aforesaid direction is being passed to prevent abuse of the process of law and for the ends of justice.

All parties are directed to act on the basis of the server copy of this order duly downloaded from the official website of this Court.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)