

11.10.2024
Sl. No.1(DL)
srm/Sc

W.P.A. No. 26007 of 2024

Bablu Kar & Anr.

Versus

State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Id. Sr. Advocate
Mr. Jayanta Narayan Chatterjee,
Mr. Shamim Ahmed
Mr. Sirsendu Sinha Roy,
Mr. Debashis Banerjee,
Ms. Jayashree Patra,
Ms. Ritushree Banerjee,
Ms. Pritha Sinha,
Mr. Supratim Barik,
Mr. Tapas Maity,
Mr. Arka Ranjan Bhattacharya

...for the Petitioners.

Mr. Amitesh Banerjee, Id. SSC
Mr. Suman Sengupta,
Ms. Amrita Panja Moulick

...for the State.

1. Affidavit-of-service is taken on record.
2. The petitioner no.1 is the father of one Kushal Kar and the petitioner no.2 is the mother of Uttaran Saha Roy. They are moving the writ petition in representative capacity for their children, as also for those detenués who have been remanded to police custody and are detained in the Central Lockup, Lalbazar.
3. It is submitted by the learned advocate on record for the petitioners that, initially the writ petition was prepared in

the names of the accused persons, but the *Vakalatnama* could not be obtained from Lalbazar Central Lockup with their signatures. The police authorities allegedly informed the learned Advocates that as no intimation in this regard was received from the Rabindra Sarobar police station, i.e., the jurisdictional police station. Thus, the vakalatnama could not be signed. The accused persons have a similar cause of action against the state respondents.

4. Parents or guardians can approach the writ Court for protection of the fundamental rights of their children/wards. Dignity and liberty of the children, who are allegedly victims of abuse of the process of law at the hands of the State machinery, are sought to be secured.
5. Mr. Banerjee, learned Senior Standing Counsel assisted by Mr. Suman Sengupta, learned advocate, submits that the affidavit indicates that the petitioners are moving the writ petition in representative capacity for all the detained persons. Their locus is not denied.
6. This Court, *prima facie*, is of the view that the writ petition can be accepted in its present form. The writ petition is considered today, only on the point of interim order, keeping the maintainability thereof open. Whether the

prayers can be granted, shall also be decided at the final hearing, by the appropriate court.

7. The constitutional court has been approached to safeguard the right to dignity and personal liberty of nine students, guaranteed under Article 21 of the Constitution of India. Further challenge is to the arbitrariness with which the police authorities have proceeded in the matter, by setting the criminal law in motion against the nine youths who were demonstrating near a puja pandal.
8. Mr. Banerjee, has vehemently urged that interference by a writ Court under Article 226 of the Constitution of India is not warranted, in view of the alternative remedy available under the criminal law. Reference is made to the decision of *Indrani Chakraborty vs State of West Bengal and Ors.* reported in (2015) 1 CHN 44. A learned coordinate Bench of this Court had held that, a judicial order could not be assailed under Article 226 of the Constitution of India, and the alternative remedy available under the statute, should be availed of by the aggrieved party. Such submission has been made by Mr. Banerjee, on the ground that the learned Chief Judicial Magistrate (in-charge), Alipore had remanded the detenues/accused persons to police custody until October 17, 2024. The order

being a judicial order, should not be interfered with by this Court under Article 226 of the Constitution of India.

9. The records before this Court, do not indicate that the order of the learned Chief Judicial Magistrate (in-charge), Alipore is under challenge. The submission of Mr. Bhattacharya, learned senior Advocate for the petitioner is that, the power of the High Court under Article 226 of the Constitution of India can always be invoked, in order to uphold personal liberty of the citizens.
10. Strangely, this Court finds that the order of the learned CJM passed on October 10, 2024 is not in the public domain. The officers of this court could not find the same in the official website of the said court. Such search was undertaken in presence of all, during the proceeding. However, Mr. Sengupta has handed over a screenshot of the order, as available in the phone of his instructing officer. Only the police seem to have a copy of the same. The learned Chief Judicial Magistrate opined that the detenues belong to a particular organised group and their remand would be necessary for further interrogation, and for the benefit of the investigation.
11. In any event, as the order is not under challenge before this Court, further deliberation in this regard is

unnecessary at this stage. An order of remand cannot be mechanically passed by a court, but the court should be satisfied with the facts, figures and the nature of investigation, before passing such order. However, this Court is not required to decide the propriety of such order.

12. The question is, whether the High Court can evaluate at the interim stage, if a case for any interim protection has been made out by the detained persons. In my view, the High Court has the power to protect the citizens from arbitrary state action and abuse of power. The High Court cannot abdicate its role and functions as a constitutional court, if a, *prima facie*, case is made out for an interim bail. Liberty is guaranteed by the Constitution of India. State action has to be free from arbitrariness. Thus Article 21 and Article 14 of the Constitution of India, in my, *prima facie*, view are directly pressed into action in the facts of this case. The petitioners allege that the instrumentality of the State is being weaponised for using the force of criminal law. *Prima facie*, the facts of this case and the progress of the investigation as available from the case diary, persuades this court to pass an interim relief in favour of the accused persons. It must be borne in mind that bail is the rule and jail is the exception. Article 21

provides that no person shall be deprived of their life and personal liberty, except according to procedure established by law. Procedure established by law would entail lawful exercise of power by the police.

13. The Hon'ble Apex Court in the matter of *Arnab Monoranjan Goswami vs The State of Maharashtra and Ors.* reported in (2021) 2 SCC 427, was of the view that deprivation of liberty even for a single day, was of one too many. In the said appeal before the Hon'ble Apex Court, the Bombay High Court had refused an interim prayer for bail which had been made in an application for quashing of a criminal proceeding. Their Lordships held that the Courts must ensure that they remain the first line of defence against the deprivation of the liberty of citizens. This Court is, *prima facie*, convinced that the State machinery was put into action in order to wrongfully take the accused persons into custody. The steps taken, *prima facie*, appear to be disproportionate to the allegations. The accused are students. They have no criminal antecedents. They are not in any way a risk or danger to the society. The FIR does not disclose that their conduct displayed serious criminal activity. The police authorities should neither arrest nor detain a person only because they are

empowered to do so. There has to be a basis or a foundation for such action.

14. The Case Diary has been placed before this Court. The petitioners have raised serious objection with regard to the procedure followed. It is stated that the Memo of Arrest and the copy of FIR had not been handed over. The parents were informed belatedly. The Case Diary contains the Memo of Arrests which appear to have been signed by the detained persons. However, service of the copies of the FIRs are not available. Statements of the accused persons have been recorded. The accused persons stated before the police that they belong to a particular political organisation and they act on the information received via WhatsApp.

15. Relying heavily on these statements, it has been urged before this Court that, further investigation and interrogation of the accused in police custody would be necessary in order to link these persons to an organised group of naxalites who, according to the police authorities, have been spreading fear, terror and hatred amongst the people, during the festive season. Reliance has been placed on a document, which contains WhatsApp chats. It appears that one Bittu Kumar Jha lodged a complaint before the Officer-in-Charge, Rabindra Sarobar Police

Station on October 9, 2024. Rabindra Sarobar Police Station Case No. 130 of 2024 dated 09.10.2024 was registered under Sections 189(2)/195/353(2)/353(3)/126(2)/61(2) of Bharatiya Nyaya Sanhita, 2023 read with Section 9 of the West Bengal Maintenance of Public Order Act, 1972.

16. Mr. Banerjee submits that some of the Sections are non-bailable. The punishment for the offence under the Act of 1972 is for a term which can extend up to ten years. The offences being serious in nature, should be viewed with the seriousness, they deserve, and the police authority should be allowed to interrogate the detained persons. The accused persons are suspected to be a part of an organised political group. The police has a reasonable belief that the group can be instrumental in spreading hatred and fear amongst the people who want to enjoy their religious festival. Statements of four witnesses have been recorded up till now.

17. Admittedly, offences under Sections 189(2) and 195 of the Bharatiya Nyaya Sanhita are bailable. The question is, whether the FIR discloses commission of offence under Sections 353(2) and 353(3) of the Bharatiya Nyaya Sanhita. The seizure list reflects that placards and festoons were recovered. All of them deal with slogans relating to R G

Kar. None of the slogans are either hateful or anti-religious. No personal attacks have been made. Even the general public who did not form a part of any organised political group, had carried out demonstrations and rallies, with similar kind of slogans. Thus, in my, *prima facie*, the intention of the detenues was not to generate hatred and fear. No harm was intended. They protested against the establishment. Such kind of protest has been going on since long. Shouting of slogans are integral to any protest by any political group. Such practice is ingrained in the spirit of democracy. These are not anti-state activities

18. Sub-Section (3) of Section 353 deals with unlawful assembly, which causes disruption to religious ceremonies. The club has not approached the police authorities with any kind of allegations. Few local persons may have disliked the nature of protest or may have also apprehended that breach of peace could take place. One such person approached the police authorities.

19. With regard to the alleged injury caused to the police officers, it appears from the prescriptions given at the OPD, are more or less similar. Pan D and Ibuprofen were prescribed. No external injuries were detected by the doctor.

20. With regard to the applicability of Section 9 of the Act of 1972, this Court is of the, *prima facie*, view that ingredients of Sections 10, 11 and 12 do not exist. Thus, a writ Court can entertain a writ petition when the FIR does not disclose commission of any cognizable offence.

21. This application is not a substitute for an application seeking bail. The Court is conscious of the constraints on a writ Court to proceed in a matter, for which a separate legal framework has been prescribed. Self-restraint must be exercised by the writ Court, but not at the cost of the liberty and dignity of an individual. While the court must act with caution and circumspection, the Court cannot foreclose itself from the exercise of power when the citizens have been deprived of their personal liberty. Here, contents of the FIR do not disclose that the accused persons had committed any grave and serious offence.

22. Whether the investigation will continue, whether the FIR will be quashed, whether the alleged persons are guilty of the offences complained of, shall be decided at a later stage, when the writ petition is finally heard. Considering the nature of the offence and the WhatsApp chats, this court is of the, *prima facie*, opinion that, at best, belligerent young men between 20 and 25 years of age, wanted to

continue their demonstration in front of those puja pandanls to draw the attention of a large gathering of people and to probably send a message that despite the festivities, all was not well. At this stage, there is no reason for the accused to be detained in police custody. The investigation will continue and they will co-operate.

23. The detained persons, namely Jahar Sarkar, Chandrachur Chawdhuri, Kushal Kar, Deeptoman Ghosh, Rwitabrata Mallic, Uttaran Saha Roy, Aisar Rahaman, Nadim Hazari, Sujoy Mondal, shall be released on interim bail upon furnishing security of Rs.1000/- (Rupees One Thousand only) each with one surety of like amount each to the satisfaction of the learned Chief Judicial Magistrate (In-Charge), Alipore, subject to the condition that they appear before the Investigating Officer once in every week.
24. The interim protection will continue till November 15, 2024 or until further order, whichever is earlier.
25. Learned Chief Judicial Magistrate (In-Charge), Alipore will act immediately, on the basis of the server copy of this order, and/or learned Advocates communication. The learned advocates for the State respondents are present before this Court and the order is dictated in open Court.

26. With regard to the demonstrations, it is made clear that the detained persons shall not create any disturbance near the puja pandals. All demonstrations should be held peacefully, at least 200 mts. away from the puja pandals. None shall disrupt the carnival, which the Government has organized, as a part of its yearly ritual.

27. The matter will appear before the regular Bench after re-opening of the Court after the ensuing Puja Vacation, on November 6, 2024.

(Shampa Sarkar, J.)