

20.03.2023.  
33.  
Ct. No.28  
as

**C.R.M. (DB) 284 of 2023**

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure.

In the matter of : Muklesur Rahaman @ Milon.  
... Petitioner.

Mr. S. Das Mahapatra,  
Ms. Soma Mal,  
Ms. June Modak.

.....for the Petitioner.

Mr. Neguive Ahamed, Id. A.P.P.,  
Ms. Trina Mitra.

...for the State.

Mr. Somnath Adhikary.

...for the de-facto complainant.

Mr. Dipak Kr. Sengupta, Sr. Adv.  
Mr. Sabir Ahmed,  
Mr. Arnab Chatterjee,  
Mr. Jisan Iqubal Hossain,  
Mr. Anisur Rahaman,  
Mr. Tapadip Gupta,  
Mr. P.P. Das.

...for the contemnors.

Abu Bakkar Siddique, Pijush Kanti Ghosh and Debasis Ray being the President, Vice-President and Secretary respectively of the Berhampore Bar Association are present in Court.

Mr. Sengupta, learned Senior Advocate representing them submits that the Berhampore Bar Association by resolution dated 13.02.2023 has withdrawn the cease work

and resolved to participate in judicial proceedings. The resolution is kept on record.

It appears the said office bearers were signatories to an earlier resolution to strike work and paralyse the courts in Berhampore. Prima facie, such a resolution runs counter to the directions passed by the Hon'ble Apex Court in **Harish Uppal (Ex-Capt.) vs. Union of India**<sup>1</sup>, **Hussain vs. Union of India**<sup>2</sup>, **Krishnakanat Tamrakar vs. State of M.P.**<sup>3</sup> and **District Bar Association, Dehradun vs. Ishwar Shandilya**<sup>4</sup>.

They are directed to submit affidavit explaining why they were signatories to a resolution to strike work which paralysed the courts at Berhampore and denied access to justice to innumerable litigants. The affidavits be filed by the adjourned date.

Learned Advocates, namely, Nayeem Faruk, Md. Atiujjaman @ Md. Atiujjaman, Tunku Abdur Rahman, Inamul Kabir, Sanowar Jahan, Harun Al Rashid, Anowar Hossain and Alokesh Pal are present before us. They represented the accuseds in the present case which involves a murder trial.

One of the accuseds, namely, Muklesur Rahaman @ Milon had approached this Court for bail. The Court was

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<sup>1</sup> (2003) 2 SCC 45

<sup>2</sup> (2017) 5 SCC 702

<sup>3</sup> (2018) 17 SCC 27

<sup>4</sup> (2020) 17 SCC 672

informed owing to the resolution of the Berhampore Bar Association trial could not proceed.

Under such circumstances, by order dated 31.01.2023 this Court observed the prosecution witnesses who are present in Court must be examined by the Public Prosecutor and the defence Counsel. In the said order the Court observed as follows:-

*“We direct the trial court, Public Prosecutor and the defence lawyer in the present case to examine witnesses who are present before the court. No adjournment shall be given by the trial court on this ground.”*

Report of the trial Judge shows on 01.02.2023 and 02.02.2023 four witnesses were present and examined in chief as P.Ws. 1, 2, 3 and 4. Notwithstanding the communication of the aforesaid order the defence counsels, namely, Nayeem Faruk, Md. Atiujjaman @ Md. Atiujjaman, Tunku Abdur Rahman, Inamul Kabir, Sanowar Jahan, Harun Al Rashid and Anowar Hossain refused to cross-examine them citing the aforesaid Bar Resolution. Trial Judge appointed Alokesh Pal, lawyer empanelled with DLSA, Murshidabad to defend the accused person who expressed his inability to do so. Accordingly, cross-examination of the said witnesses had to be deferred to a subsequent date.

The aforesaid facts prima facie show that the defence lawyers, namely, Nayeem Faruk, Md. Atiujjaman @ Md. Atiujjaman, Tunku Abdur Rahman, Inamul Kabir, Sanowar Jahan, Harun Al Rashid, Anowar Hossain and Alokesh Pal

had acted contrary to the directions in order dated 31.01.2023. They are present in Court and reiterate their stance that they acted in terms of the Bar resolution.

Under such circumstances, we are constrained to issue a Rule calling upon the said lawyers, namely, Nayeem Faruk, Md. Atiujjaman @ Md. Atiujjaman, Tunku Abdur Rahman, Inamul Kabir, Sanowar Jahan, Harun Al Rashid, Anowar Hossain and Alokesh Pal to show cause why they shall not be held guilty of wilful, deliberate and contumacious violation of order dated 31.01.2023.

The contemnors are present in Court and Rules be served in course of the day.

Affidavits in response to the Rule be filed by the adjourned date.

The matter is adjourned for four weeks (17.04.2023).

Presence of the contemnors are noted and dispensed with at present.

**(Ajay Kumar Gupta, J.)**

**(Joymalya Bagchi, J.)**