

34
17.08.2020
rrc/tkm

CRM 4231 of 2020
CRAN 2422 of 2020
(Via Video Conference)

In re : An application under Section 438 of the Code of Criminal Procedure in connection with Hare Street P.S. Case No. 123 of 2020 dated 05.04.2020 under Sections 153/182/504/505(1)/ 505(2) of the Indian Penal Code.

In the matter of : **Anirban Chattopadhyay**

..... petitioner

Mr. S. N. Mookherjee, Sr. Adv.
Mr. Sandipan Ganguly, Sr. Adv.
Mr., Somopriyo Chowdhury
Mr. Arunabha Deb
Ms. Ashika Daga

.....For the petitioner

Mr. Kishore Dutta, learned Advocate General
Mr. Swapan Banerjee

.... For the State

Petitioner undertakes to affirm and stamp the petition/application as per Rules within a month of resumption of normal functioning of the Court. Subject to such undertaking, the application is taken up for hearing through video conferencing.

The petitioner is the former editor of a reputed bengali newspaper named and styled as 'Anandabazar Patrika'. A news item under the heading "Khali Hatei Chikitsa Bikkhob Bangure" is the subject matter of investigation in the present case. The said report highlighted the grievances of health workers including medical personnel in the said hospital with regard to non-availability of

personal protective equipments (PPE for short) and other facilities which are essential for fighting the COVID pandemic.

Learned Advocate General with Mr. Banerjee contends the report is out and out false and the editor without verifying primary facts published a false, scurrilous and insinuatary report which caused unnecessary commotion and disruption in the State's effort to fight the pandemic. As a result, First Information Report was registered under various provisions of the Indian Penal Code. Subsequently, offences under the Disastrous Management Act has also been added. It is further contended that the petitioner did not cooperate with investigation and failed to respond to notice under Section 41A of the Criminal Procedure Code issue.

Mr. Mookherjee, learned senior counsel for the petitioner denies and disputes the submission that the contents of the report are false. He argues that the ingredients of the alleged offences are not disclosed in the facts of the case. Petitioner as editor was wholly justified in publishing the news report relating to agitation in hospital in public interest. Freedom of the press which cannot be whittled down by the sceptre of arrest and frivolous investigation.

In reply, learned Advocate General submitted that the investigation has been conducted in a bona fide manner and the State was constrained to lodge the F.I.R. as the contents of the news report was untrue. No doubt, public agitation had taken place in the hospital

but the same was owing to dissatisfaction over declaration of the said hospital as a COVID hospital and not due to lack of facilities to fight the virus, as alleged.

We have given anxious considerations to the rival submissions of the parties. Admittedly, there was a public agitation amongst health workers including doctors in the hospital. While news report emphasizes lack of inadequate supply of PPE, learned Advocate General would contend that the agitation was for other reasons.

As public agitation in a Government hospital with regard to treatment of COVID patients therein is an admitted situation, publication of the news item, in the backdrop of such facts, cannot be said to be with malicious intention. Whether such agitation was due to inadequate supply of medical facilities, for example, PPEs or for other reasons would not stand in the way of a newspaper editor publishing the factum of agitation or disclosing views of individuals with regard thereto. Such action by no stretch of imagination would transgress culpable limits justifying the present investigation.

In view of the aforesaid facts and keeping in mind the nature of accusation levelled against the petitioner, we are of the considered view that the instant case does not call for custodial interrogation at all.

With regard to the allegation of lack of cooperation of the petitioner, we note that the petitioner offered himself for interrogation,

albeit at his office in view of the prevailing pandemic observing social distancing norms.

In this backdrop, we cannot also accede to the submission of the State that the petitioner had behaved in an obstructionist manner to the progress of investigation.

In the light of the aforesaid discussion, we are inclined to grant pre-arrest bail to the petitioner on furnishing a personal release bond of Rs.500/- to the satisfaction of the Arresting Officer.

CRM. 4231 of 2020 and CRAN 2422 of 2020 are disposed of.

(Kausik Chanda, J.)

(Joymalya Bagchi, J.)