

08.12.2022
Court No.13
Item No.16
AP

WPA 25522 of 2022

**Suvendu Adhikari
Vs.
State of West Bengal and Ors.**

Mr. Paramjit Singh Patwallia, Senior Advocate
Mr. Rajdeep Majumder
Mr. Sourabh Chatterjee
Mr. Moyukh Mukherjee
Ms. Harshika Verma
Ms. Aishwarya Bazaz

...For the petitioner.

Mr. S.N. Mookherjee, Advocate General
Mr. Anirban Ray
Mr. T.M. Siddiqui
Mr. Debasish Ghosh
Mr. Nilotpal Chatterjee
Mr. Debraj Sahu
Ms. Amrita Panja Moulik
Mr. Yash Singh

...For the State.

Mr. Ashok Kumar Chakrabarty, Additional Solicitor General
Mr. Sukanta Chakraborty
Ms. Oishani Mukherjee

...For the CBI.

Mr. Partha Sarathi Bhattacharyya, Senior Advocate
Mr. Raju Bhattacharyya
Mr. Rajdeep Pramanick

...For the Respondent No.18.

Supplementary affidavit filed on behalf of the writ petitioner is taken on record.

The writ petitioner is the Leader of the Opposition in the State. He is aggrieved by the State lodging 17 FIRs against him. The sum and substance of the argument advanced by Mr. Paramjit Singh Patwallia, learned Senior Advocate appearing for the petitioner is that the FIRs which have now reached 26 in number are an attempt to

prevent the writ petitioner from performing any functions as a people's representative. The said FIRs have been registered motivatedly at the instance of the ruling dispensation.

Particulars of some of the FIRS against the petitioner are set out hereinbelow:-

Sl. No.	FIR No.	Date	Sections	Police Station	Gist
1.	705/21	23.10.2021	153A/153B/295 A/298/504/505/120B/34 IPC	Nandigram	Accused of making offensive statements to provoke breach of peace in the State.
2.	77/22	04.02.2022	143/149/188/186/114/353/500/504/506 IPC 32 Police Act 51(b) Disaster Management Act	Asansol	
3.	73/22	17.02.2022	341/506/509/34 IPC	Contai	Threatened complainant, after being refused to vote and participate in his campaign.
4.	74/22	17.02.2022	34/341/506 IPC	Contai	Threatened complainant, after being refused to vote and participate in his campaign.
5.	75/22	17.02.2022	34/341/506 IPC	Contai	Threatened complainant, after being refused to vote and participate in his campaign.
6.	83/22	19.02.2022	307/323/25/34/341/354/427/506 IPC	Contai	Attack and vandalism of party office, assault, with the intent to kill complainant, and threat to female supporters.

7.	29/22	16.03.2022	143/186/188/ 269/270/283 IPC	Durgachak	Party rally/processi on without prior permission.
8.	53/22	17.03.2022	166/189/341/ 506 IPC	Hare Street	Threat of dire consequences , criminal intimidation, intentional restraint.
9.	85/22	16.07.2022	166A/171F/189/ 387/389/506/ 109/120B IPC	Pandaveswar	Bribe offered to complainant to vote in favor of the Presidential Candidate of BJP. Threatened, when bribe refused.
10.	176/22	24.07.2022	120B/469/465/4 71/501/505(1)(c) /153 IPC 66 C I.T. Act	Amherst Street	Criminal conspiracy to damage reputation of TMC, via Twitter.
11.	178/22	08.09.2022	341/324/506/ 427/34 IPC	Jadavpur	Threat and assault on complainant and other TMC supporters
12.	390/22	28.10.2022	153A/295A/ 505(2) IPC	Nandakumar	Accused of making offensive statements to provoke breach of peace in the State, targeting majority communities, and stating that the Hindus in the State are endangered.
13.	1453/22	11.11.2022	341/323/326/30 7/435/427/504/ 506/120B IPC 25/27 Arms Act, 1959 3/4 Explosive Substances Act, 1908	Nandigram	Breach of peace caused through fire arms and explosives. Attack, threat and assault on members of BUPC. Fire started at the stage made by TMC party.

This Court is also required to consider as to whether, since after a restraint order was passed on the State against any coercive measures on the writ petitioner on the 6th of September, 2021 in W.P. No. 11803 of 2021, a novel method has been adopted by the ruling dispensation to choke the writ petitioner in FIRs and notices under Section 41(A) of the Cr.P.C., thereby frustrating the effect of the said order passed by this Court in the said writ petition.

By the said order dated 6th September 2021 passed on the aforesaid writ petition (supra) a series of six FIRs filed against the petitioner were considered by this Court. This Court had found that there was a scheme and/or design by the ruling dispensation in the State to somehow deprive the writ petitioner of his liberty. Some of the FIRs were stayed and the writ petitioner was asked to cooperate with the investigation in other FIRs of the Contai, Tamruk and Maniktala Police Stations. Thereafter about 17 FIRs have come to be registered against the writ petitioner.

Some paragraphs from the said decisions are set out below:-

“The Court notes that the circumstances of the circumstances of the Bimal Gurung decision are quite different from that of the case of the writ petitioner. Bias and malicious prosecution cannot be ruled out in the instant case since the petitioner is being persecuted at four different police stations by four different sets of individuals. A careful scrutiny of the complaints and the FIRs registered against the petitioner naming him directly or indirectly would indicate that the allegation of abuse of State police machinery cannot be completely ignored.”

The reference to paragraph 59 of the decision of the Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.** reported in **(2020) 10 SCC 118** must be viewed in the light of the facts of the said case. It, therefore, cannot be said that no prima facie case whatsoever for quashing of some of the cases against the petitioner if not transfer of all investigations to the CBI have not been made out.

The above observations are prima facie findings. The writ petition is entertained by this Court in view of prima facie satisfaction that the police of the State, in the series of 5 FIRs registered against the petitioners appeared to have acted overzealously and maliciously inter alia for the followings amongst other reasons:-

- a) The petitioner was found eligible for Z category security cover, while he was a Member of a political party which is now in power of the State, is suddenly found disentitled thereto, since after change of political allegiance and after the Assembly Elections on 2nd July, 2021. A Coordinator Bench has prima facie found in favour of the petitioner and against the State in this regard albeit at an interlocutory stage.
- b) Well-over 7-8 and in some cases 13 consecutive FIRs have been registered against the associates since after the recent assembly elections. The said associates of the petitioner, had also changed partnership with the political parties along with him. An incident of the year 2018 is registered as an FIR for investigation even without preliminary enquiry as regards delay in lodging of the complain. The High Court had found in favour of such associates and had granted relief albeit at an interlocutory stage.
- c) The petitioner was charged with theft of tarpaulin sheets when 2 days prior to the registration of FIR, the Chairman of the Municipality had complained to the police that there was "an attempt to steal" the said tarpaulins."
- d) A case of suicide closed in the year 2018 and publicly announced such by the SP, is registered as a murder case against the petitioner 3 years thereafter. The FIR is registered by the Contai PS even without preliminary inquiry.
- e) Notwithstanding orders of this Court against arresting the said Rakhil Bera, an associate of the petitioner the State Police has maliciously and contumaciously arrested him, as recorded by a Division Bench of this Court.

In **Arnesh Kumar Vs. State of Bihar** reported in **(2014) 8 SCC Page 273**, the Supreme Court has held that the power of arrest must be sparingly used by the Police. It was held that arrest has the consequence of social stigma and lowering the image and dignity of a person in the eye of society. Guidelines came to be laid down under Section 41 and 41A of the Cr.P.C for the Police to mandatorily comply with.

Further in the case of **Mukesh v. State (NCT of Delhi)**, **(2017) 6 SCC 1, Paragraph 50** the Hon'ble Supreme Court held that usually delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by the courts with suspicion.

This Court finds substantial force in the petitioner's argument. Prima facie there appears to be an attempt at implicating and victimizing him in criminal cases and mala fides, malice and collateral purpose in registering the FIRs against the petitioner and his associates. A scheme and or conspiracy and or pattern

and or stratagem appear to have been devised to entrap the petitioner and his associates to ensure their incarceration and custody inter alia to embarrass them.

Article 21 of the Constitution of India enshrines the most vital rights that a citizen of this country is required to be secured with. The rights under Article 21 and importance thereof cannot be overemphasized. The rights under Article 21 are so very basic and fundamental and clearly touch upon human rights that they are guaranteed even to non-citizens. The deprivation of such liberty is required to survive the tests of due process and or the procedure established by law.

Any indication of such deprivation of liberty, contrary to procedure established by law, calls for an immediate intervention under Article 226 of the Constitution of India. The right to life and personal liberty under Article 21 is cardinal, above all and completely non-negotiable.

In the instant case there is prima facie evidence before this Court of abuse and or misuse of State and police machinery in registering cases for investigation based on half-truths, fiction, concoctions and non-events.

There shall be a stay of proceedings in respect of the Contai Police Station Case No. 248 of 2021 dated July 7, 2021 and the Nandigram Police Station Case No. 110 of 2021 dated March 18, 2021. The investigation into the other two Police Station cases i.e. Manicktala Police Station Case No. 28 of 2021 dated February 27, 2021 and Tamluk Police Station Case No. 595 of 2021 dated July 19, 2021, the investigation may go on but no coercive action shall be taken against the petitioner. The petitioner shall cooperate in the investigations.”

It is argued that most of the aforesaid FIRs are in respect of small, flimsy acts alleged against the writ petitioner. There are threats and public speeches, stated to have been made by the writ petitioner. Some of such speeches are stated to have hurt the sentiments of a section of citizens. These are threats and intimidation alleged to have been made by writ petitioner while canvassing for votes. In fact, some of the complaints based on which FIRs have been registered have been described as, “Fill in the Blanks” FIRs. The name of the complainants, age and father’s name have been left blank to be filled in at random. Such blank complaints appear to have been handed out casually to persons owing allegiance to the ruling dispensation. Such persons appear

to have left such complaints at police stations after filling in blanks at which the concerned police appear to have, mechanically overzealously and in furtherance of the dictates of some quarters, registered FIRs in a premeditated manner.

The actual intended consequence of FIRs is that for twenty-six days in a month the writ petitioner would be confined in police stations to respond to notices under Section 41(A) of the Cr.P.C. and be forced to abandon his public duties.

It may be necessary to refer to the submissions of the learned senior counsel for the writ petitioner that his client had contested in the last assembly elections against the present head of the ruling dispensation and won. The personal vendetta of some persons owing allegiance to the said person against the writ petitioner, therefore, cannot be ruled out.

The reasons behind dragging one single individual and his family members in such volume of complaints and FIRs, are argued to be irrational and unexplained, and motivated.

This Court refers to hundreds of writ petitions that have been dealt with in the last few months in respect of FIRs against various persons of offences, similar to those referred to in the FIRs against the writ petitioner. In most of the cases either proceedings under Sections 107 and 116 of the Cr.P.C. were drawn up or the police merely

conducted enquiries and warned such persons. However, a completely different approach appears to have been adopted by the State police in so far as the writ petitioner is concerned.

The learned Advocate General, Mr. S.N. Mookherjee, appearing for the State police has placed at least 7 notices issued under Section 41(A) of the Cr.P.C. to the writ petitioner as permitted in the order dated 6th September 2021 (supra). Replies of the writ petitioner have been placed whereby he has not been able to indicate any time frame within which he would respond to such notices.

It is argued by Mr. Mookherjee that a person having obtained protection from the Writ Court against coercive measures by the police, has abused such interim order by refusing to cooperate in an investigation. No relief therefore should be granted to the petitioner in the instant case. This is an argument that will have to be examined in course of final hearing of the writ petition i.e. WPA 11803 of 2021.

However, that by itself cannot give a Carte Blanche to the State police to indiscriminately register FIRs against the writ petitioner and mechanically or motivatedly so. This Court refers to observations made in paragraphs of the order dated 6th September 2021 (supra) already set out hereinabove.

The allegations of counsel for the writ petitioner that each of the FIRs registered against the writ petitioner post the order dated 6th September 2021 (supra) were an attempt to frustrate the protection order granted to the writ petitioner cannot be brushed aside. There is substance in such argument.

Mr. Mookherjee referred to the dicta of the Supreme Court in ***M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors.*** reported in ***2021 SCC OnLine SC 315.***

Indeed a Writ Court must be circumspect and slow to quash FIRs. More caution is warranted in respect of charge sheet.

However, in the peculiar facts and circumstances of the instant case, the fact that the writ petitioner is an elected representative of the people holding the post of Leader of the Opposition, the Court's mind is not free from doubt that the State police machinery, either on its own or under the influence of persons in the ruling dispensation, is out to completely stall the public life and personal liberty of the writ petitioner. There appears to be a calculated design to deprive the liberty of the petitioner.

As already stated hereinabove, there appears to be an attempt to bypass the interim protection granted to the writ petitioner in the order dated 6th September 2021 (supra) that has been upheld by the Hon'ble Supreme Court.

In these circumstances, this Court is of the view that each and every FIRs referred to in the writ petition shall remain stayed. The State police shall not register any more FIRs against the petitioner, without the leave of this Court. The other prayers for transfer of investigation etc. shall be considered after affidavits are received from the respondents.

Let affidavit-in-opposition be filed within a period of four weeks from date. Reply, if any, be filed within two weeks thereafter.

Let this writ petition be heard along with WPA 11803 of 2021.

Liberty to mention.

(Rajasekhar Mantha, J.)