

**HIGH COURT OF TRIPURA
AGARTALA
AB 87/2020**

Karnajit De -----Petitioner(s)
Versus
The State of Tripura -----Respondent(s)

For Petitioner(s) : Mr. Raju Datta, Advocate

For Respondent(s) : Mr. Samrat Ghosh, Addl. PP

**HON'BLE MR. JUSTICE ARINDAM LODH
Order**

30/07/2020

Heard Mr. R. Datta, learned counsel appearing for the petitioner as well as Mr. Samrat Ghosh, learned Addl.PP appearing for the State-respondent through video conferencing.

Mr. R. Datta, learned counsel appearing for the petitioner, Sri Karnajit De who has approached this Court with an application under Section 438 of the Code of Criminal Procedure for granting anticipatory bail to him in connection with NCC Police Station Case No.2020 NCC 106 under Section 323/353/506/34 IPC and Section 3(2) (i) of Epidemic Diseases Amendment Act, 2020 read with Section 3 of the Tripura Medicare Service persons and Medicare Service Institution (Prevention of Violence & damage Property) Act, 2013.

Mr. Datta, learned counsel for the petitioner has drawn my attention at the complaint lodged by the Director of Health Services, Government of Tripura, stating *inter alia* that one Dr. Sangita Chakraborty, who was serving as District Health Officer, West Tripura, and was discharging her duties as in-charge of distribution of COVID-19 patients in the two centres on 24.07.2020, Saturday, at around 7.00 P.M. five post delivery mothers along with their new born babies, who were tested COVID-19 positive, were sent to the Bhagat Singh COVID Care Centre, soon after their deliveries to ensure maximum safety and much needed seclusion for the mother and the new born babies under the strict surveillance of Dr. Sangita Chakraborty. It is further stated that when the said patients and the accompanying health staffs reached near B-Block of the said centre, some of the previously admitted older inmate patients started protesting indiscriminately demanding that they would not allow entry of any new patients in the centre. It is further stated in the complaint that when the situation had worsened, Dr. Chakraborty realizing the seriousness of the developments, immediately reached the place of occurrence and maintaining the desired composure

form a public servant, tried to convince the unruly protestors and repeatedly insisted to behave responsibly. However, the protestors furiously reciprocated and started abusing Dr. Chakraborty in utterly filthy languages and also threw some sexually coloured remarks. They even went further and started jointly spitting on the face of Dr. Sangita Chakraborty and one of them climbed upstairs from where he took some water in his mouth and showered gargled water upon Dr. Chakraborty, who was then somehow saved by the timely interference of her staff but not before receiving some minor injuries. Some of the protestors even went further and threatened her and her family with dire consequences once they are out of their quarantine, which has left the esteemed doctor and her family in a state of terror and helplessness.

On the basis of this complaint, the Officer-in-Charge of the NCC Police Station had registered an FIR No. 2020 NCC 106 dated 27.07.2020 under Section 323/353/506/34 IPC and Section 3(2)(i) of Epidemic Diseases Amendment Act, 2020 read with Section 3 of the Tripura Medicare Service Persons and Medicare Service Institution (Prevention of Violence & damage Property) Act, 2013.

At the time of moving the bail application, Mr. Datta, learned counsel appearing on behalf of the petitioner-Sri Karnajit De has argued with vehemence that the petitioner is seriously apprehending his arrest in connection with the case. Mr. Datta, learned counsel has further argued that the name of the petitioner has not been transpired in the complaint itself, as such, there is no accusation against him, and on this ground alone, the petitioner should be granted anticipatory bail. Mr. Datta, learned counsel further submits that the petitioner is an advocate and holds the post of Addl. Government Advocate under the Government of Tripura and is a member of Advocate's community.

This Court has put a question to Mr. Datta, learned counsel, whether mere apprehension of arrest attracts the ingredients of Section 438 of Cr.P.C. to which Mr. Datta, learned counsel has fairly submitted that mere apprehension of arrest does not attract the ingredients of Section 438 of Cr.P.C. for granting anticipatory bail. But, Mr. Datta, learned counsel has submitted that the petitioner finds no reason as to why he has been shifted to another COVID Care Centre at SIPARD from Bhagat Singh COVID Care Centre where he was

being treated for the last nine days. According to Mr. Datta, learned counsel, as soon as COVID patient is treated for nine days, he should be released from the centre. At this juncture, this Court has asked Mr. Datta, learned counsel, whether the treating doctors have issued any certificate that he has been totally cured from his infections, but he could not produce scrap of paper to convince the Court that the petitioner has been totally cured from the COVID infection.

On the other hand, Mr. S. Ghosh, learned Addl. P.P. appearing for the State has submitted that the only reason for apprehension of arrest of the petitioner as is surfaced in the petition as well as from the submission of the learned counsel appearing on behalf of the petitioner is that, the petitioner has been shifted from the Bhagat Singh COVID Care Centre to COVID Care Centre at SIPARD and for the reason that he was one of the Co-patients amongst other patients in that centre. However, learned Addl. P.P has fairly submitted that mere apprehension of arrest cannot be the ground to grant anticipatory bail as provided under Section 438 of the Code of Criminal Procedure, 1973.

Mr. Ghosh, learned Addl. P.P. has further submitted that he instructed the concerned authorities to produce the case diary but he was informed by the investigating officer that the case diary was yet to be prepared, and he needs some time to produce the case diary.

On the basis of the aforesaid submission, this Court has given its first consideration to the definition of Section 438 Cr.P.C. which reads as under:-

" 438. Direction for grant of bail to person apprehending arrest.- (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this Section that in the event of such arrest he shall be released on bail: and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- (iii) the possibility of the applicant to flee from justice; and*
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,*
either reject the application forthwith or issue an interim order for the grant of anticipatory bail;"

The relevant provisions to be considered to decide the instant bail application are necessary to reproduce here-in-below. Section 353 of Indian Penal Code reads as under:-

"353. Assault or criminal force to deter public servant from discharge of his duty.- Whoever assaults or use criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 3 of The Epidemic Diseases (Amendment) Ordinance, 2020 (for short, Ordinance 2020) reads thus:-

"3. After section 1 of the principal Act, the following section shall be inserted, namely:-

- (a) "act of violence" includes any of the following acts committed by any person against a health care service personnel serving during an epidemic, which causes or may cause-
- (i) Harassment impacting the living or working conditions of such healthcare service personnel and preventing him from discharging his duties
 - (ii) Harm, injury, hurt intimidation or danger to the life of such healthcare service personnel either within the premises of a clinical establishment or otherwise;
 - (iii) Obstruction or hindrance to such healthcare service personnel in the discharge of his duties, either within the premises of a clinical establishment or otherwise; or

- (iv) *Loss of damage to any property or documents in the custody of, or in relation to, such healthcare service personnel*
- (b) *"healthcare service personnel" means a person who while carrying out his duties in relation to epidemic related responsibilities, may come in direct contact with affected patients and thereby is at the risk of being impacted by such disease, and includes-*
 - (i) *any public and clinical healthcare provider such as doctor, nurse, paramedical worker and community health worker;*
 - (ii) *any other person empowered under the Act to take measures to prevent the outbreak of the disease or spread thereof; and*
 - (iii) *any person declared as such by the State Government, by notification in the Official Gazette;*
- (c) *"property" includes-*
 - (i) *A clinical establishment as defined in the Clinical Establishment (Registration and Regulation) Act, 2010;*
 - (ii) *any facility indentified for quarantine and isolation of patients during an epidemic;*
 - (iii) *a mobile medical unit; and*
 - (iv) *any other property in which a healthcare service personnel had direct interest in relation to the epidemic;*
- (d) *the words and expression used herein and not defined, but defined in the Indian Ports Act, 1908, the Aircraft Act, 1934 or the Land Ports Authority of India Act, 2010, as the case may be, shall have the same meaning as assigned to them in that Act."*

Section 6 of the Epidemic Diseases (Amendment)

Ordinance, 2020 further provides that:-

"6. Section 3 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:-

"(2) Whoever,-

- (i) commits or abets the commission of an act of violence against the healthcare service personnel; or
- (ii) abets or causes damages or loss to any property,

Shall be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to tow lakhs rupees

(3) Whoever, while committing an act of violence against a healthcare service personnel, causes grievous hurt as defined in Section 320 of the Indian Penal Code to such person, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees.”

Section-7 of the Ordinance Act 2020 further stipulates that:-

"After section 3 of the principal Act, the following sections shall be inserted namely:-

- (i) an offence punishable under sub-section (2) or sub-section(30 of section 3 shall be cognizable and non-bailable;
- (ii) any case registered under sub-section (2) or sub-section 93) of section 3 shall be investigated by a police officer not below the rank of Inspector.;
- (iii) investigation of a case under sub-section (2) or sub-section (3) of section 3 shall be completed within a period of thirty days from the date of registration of the First Information Report.
- (iv) In every inquiry of trial of a case under sub-Section (2) or sub-section (3) of section 3, the proceedings shall be held as expeditiously as possible, and in particular, when the examination

of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded, and an endeavour shall be made to ensure that the inquiry or trial is concluded within a period of one year.....”

Section 3 of the Tripura Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2013 read as under:-

“Whoever-

- (a) Commits an act of violence against a medicare service person; or*
 - (b) Causes any damages to the property of any medicare service institutions,*
- shall be punished with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees.*

Section 4 of the Tripura Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2013 read as under:-

“ 4. An offence punishable under Section 3 shall be cognizable and non-bailable”

Keeping in view the law as delineated here-in-above and the object of amendment and legislation as carried out by our law makers, let me proceed to examine the present bail application.

Needless to say, Doctors are in the frontline of the battle against Coronavirus pandemic, which has now affected lakhs of people and claimed many lives in the country with further reports that para-medical staff and Doctors getting affected by COVID, the focus has now shifted to those brave souls. Our law makers in their own wisdom and after well thought consideration have described the Doctor, para-medical staff, their associates and the police forces as the frontline warriors for their sincere and devoted dedication and constant fight against the deadly disease engulfed in the entire country. Further, they are the "*first line defence of the country*" in the fight against Coronavirus. It is even reported that many Doctors and nurses have been complaining of fatigue, dehydration and headache due to grueling schedule as they are to work non-stop for seven to eight hours in one go, without any break. They have always taken all kinds of risk not only on their own shoulders but also upon their family members and even to their kids and their old aged parents.

Coming to the present case, the Director of Health Services, Government of Tripura had lodged a serious compliant against some of the patients, who not only had

made the Doctors and other staffs vulnerable to the infection which will deprive many patients from their valuable service. They created serious obstacles in treating the COVID patients, who are the mothers of the new born babies and suffering from COVID infections and thus prevented the lady Doctor and her staffs to discharge their official duties smoothly and freely. In my opinion, this kind of acts and commission are not only detrimental to the sentiment, safety and security of the Doctors, the "*frontline warriors*" of the nation, but also detrimental to the interest of the entire society of our nation as well as of this state. It is not at all tolerable and should not be tolerated for a single moment, and the real offenders are to be booked and punished in accordance with law.

I have given my anxious thought to the submission of Mr. Datta, learned counsel that the petitioner in this petition is an advocate and holding the post of Addl. Government Advocate. According to me, the petitioner being an Advocate is engaged and associated with a Noble profession, and, who, as a representative of the law makers of the State, should be more responsible and dutiful towards the cause of the Doctor and society as a whole. His acts and commissions shall be the

example to others. Till now, this Court does not find any specific accusation against the petitioner. However, both the learned counsel appearing for the parties to the *lis* have apprehended his implication in connection with the offence.

Keeping in view the object of bringing the Ordinance 2020 and the seriousness of the complaint as lodged by the Director of Health Services, Government of Tripura, I direct the Investigating Officer to record confessional statement of the victim Dr. Sangita Chakraborty and her supporting staff under Section 164(5) of the Cr. P.C. within 24 hours, however, at the convenience of the said Doctor and her other associates. The Investigating officer is further directed to arrange for T.I. parade, if necessary, to identify the real offenders. Learned Addl. P.P. is requested to produce the case diary on 05.08.2020 to find out the reasonable apprehension and accusation, if any, against the petitioner.

A copy of this order may be communicated to the Superintendent of Police, West Tripura, Agartala for compliance of the order forthwith. A copy may also be forwarded to the learned counsel of the petitioner and learned

Addl. P.P. for immediate forwarding the copy of the order to the investigating officer to act in terms of the above order.

In the meantime, the police authorities are given liberty to proceed in accordance with law to protect and restore the confidence of the Doctors and para-medical staff and all concerned who are sacrificing their lives to fight against the dreaded Coronavirus .

List the matter on **05.08.2020**.

A copy of this order may also be supplied to the learned counsel for the parties through e-mail or Whatsapp duly authenticated by the Registrar (Judicial) which shall serve all practical purposes.



JUDGE

सत्यमेव जयते