

06.09.2021.  
Item No. 38.  
Court No.13  
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**W.P.A. No. 11803 of 2021  
(Through Video Conference)**

**Suvendu Adhikari  
Versus  
The State of West Bengal & Ors.**

Mr. Paramjit Singh Patwalia, Id. Sr. Advocate,  
Mr. Rajdeep Majumder,  
Mr. Billwadal Bhattacharyya,  
Mr. Sourav Chatterjee,  
Mr. Kallol Mondal,  
Ms. B. Swaraj,  
Mr. S. Kotwal,  
Ms. M. Hasija,  
Mr. Moyukh Mukherjee,  
Mr. Soumya Nag,  
Mr. Anish Kumar Mukherjee,  
Mr. Amrit Sinha,  
Mr. Soumosree Chatterjee.

..For the petitioner.

Mr. Kishore Datta, Id. Advocate General,  
Mr. Amitesh Banerjee, Id. Sr. Standing Counsel,  
Mr. Anirban Ray, Id. Government Pleader,  
Md. T.M. Siddiqui,  
Mr. Sayan Sinha,  
Mr. Simanta Kabir.

...For the State.

Mr. S.N. Mukherjee, Id. Sr. Advocate,  
Mr. Arnab Basu Mullick.

...For the respondent no.12.

Mr. Y.J. Dastoor, Id. Additional Solicitor General,  
Mr. Phiroze Edulji,  
Mr. Samrat Goswami.

...For the CBI.

The writ petitioner complains of abuse of State and Police machinery by the ruling dispensation in registering 6 FIRs against him in 4 different police stations. Claiming violation of rights under Article 21 of the Constitution, the writ petitioner seeks intervention of this Court under Article 226, with

criminal proceedings filed against him by the State police. Alternatively, the petitioner seeks transfer of the investigation of the said 6 FIRs to the CBI.

The writ petitioner is an Member of the Legislative Assembly and leader of the Opposition Party in the State of West Bengal. Until the December 2020, the writ petitioner was a member of the political party which was in power in the State. Since 19<sup>th</sup> December, 2020, he joined a rival political party and had contested elections. While the petitioner was a member of the current ruling dispensation, prior to December 2020, he was Transport minister of the State cabinet and was also in charge of the Department of Irrigation and Water bodies. Prior thereto, in the year 2009 the petitioner was a Member of Parliament.

According to Counsel victimisation and harassment by the State had begun immediately after the petitioner changed political allegiance in December 2020 and intensified after the Assembly elections in May 2021. The State fired the first salvo against the petitioner by removing his existing security cover. The petitioner approached this Court. Pursuant to an order dated 2<sup>nd</sup> July, 2021 passed in **WPA 11803 of 2021 (Suvendu Adhikari Vs. State of West Bengal and Ors)** a Coordinate Bench had directed that the Z

category security arrangements as per the Yellow Book of the Govt. of West Bengal to be restored and continued to him.

According to the petitioner, thereafter, the State with a view to unleash vendetta against him, lodged several criminal proceedings against him and his close associates.

On 22<sup>nd</sup> February, 2021, Maniktala Police Station Case No. 28 of 2021 was registered under Sections 120B/420/467/468/471. The complainant, one Sujit De, accused one Rakhal Bera and Chanchal Nandy and three Other Unknown Persons of taking money and promising a government job in July 2019. It is submitted that it is the writ petitioner who is the actual target of the Maniktala Police Station at the instance of the ruling dispensation. Admittedly, the said Rakhal Bera and Chanchal Nandi are close associates of the petitioner. It is submitted that despite the delay of about two years in registering FIRs, the Maniktala Police Station has mechanically registered the FIR contrary to the dicta of the Hon'ble Supreme Court in the case of the **Lalita Kumari vs Govt. Of U.P. & Ors** reported in **(2014) 2 SCC 1**.

The said Rakhal Bera was arrested but was released pursuant to the orders of this Court dated 2<sup>nd</sup> August, 2021 passed in WPA 11778 of 2021 under

Article 226 of the Constitution of India. Affidavits have been called in the said writ petition, which is pending.

On an appeal being MAT No. 730 of 2021 preferred by the State against the said order dated 2<sup>nd</sup> August, 2021 it was found by a Division Bench that notwithstanding the aforesaid order of the Single Bench, the writ petitioner-respondent therein, was contumaciously and illegally arrested by the State in connection with another case.

Chanchal Nandi also approached this Court under Article 226 of the Constitution of India by way of WPA 10753 of 2021. By order dated 15<sup>th</sup> July, 2021, it was directed that no coercive action would be taken against the petitioner and the affidavits were called from the State. The said writ petition is pending.

On the 18<sup>th</sup> of March, 2021, Nandigram Police Station has registered another FIR against the petitioner under Sections 149/323/325/307/354/370 and 506 of the IPC on a complaint one Shefali Shit. It was alleged that the petitioner who was in a procession during a campaign for elections of a rival political party, the complainant therein was assaulted and roughed up, inter alia, by the petitioner for shouting slogans. 42 persons have been named in the FIR of which the writ petitioner is alleged accused No.4. The FIR was registered under Sections

147/148/149/323/325/307/354/379 and 506 of the IPC.

On the 1<sup>st</sup> June, 2021 about a month after results of the Assembly Elections were declared, Contai Police Station registered FIR NO. 193 of 2021 dated 01.06.2021 under Sections 448/379/409 and 120B of the IPC read with Sections 51 and 53 of the Disaster Management Act 2005. It is alleged by the defacto complainant, one Ratnadeep Manna, who was one of the Board of Administrators of the Contai Municipality, that on the instructions of the writ petitioner and his brother, Soumendra Adhikari, certain Tarpaulin sheets were stolen from the godown of the Cantai Municipality. It is submitted that the allegations in the complaint are belied by the facts that two days prior to the said FIR, the Chairman of the Board of Administrators, Contai Municipality, one Siddhartha Maity on 29<sup>th</sup> May, 2021, had complained to the Contai PS of an attempt by certain persons to steal tarpaulins. A GD entry to this effect has been made. No theft was alleged or stated to have occurred, on the said date, two days prior to the date of FIR. The contradiction distortion in the facts itself would reflect the mala fide, vexatiousness, maliciousness and falsehood behind the FIR.

On the 7<sup>th</sup> of July, 2021, Contai PS registered FIR No. 248 of 2021 under Sections 302 and 120B of the Penal Code. The complaint was lodged by one Mrs. Subarna Kanjilal Chakraborty, alleging that her husband Late Suvabrata Chakraborty, who was a part of the security team assigned to the writ petitioner, was killed by him, on 13<sup>th</sup> October, 2018. It is submitted by the petitioner that the Phoolbagan Police Station had initiated a UD Case being inquest No. 71 dated 15<sup>th</sup> October, 2018 on the death of the said Subabrata Chakraborty. The post-mortem report which was with the Phoolbagan PS, had indicated that the said Suvabrata died as a result of a suicide after having shot himself with his service revolver. GDE No. 696 dated 13.10.2018 recorded at 10.55 hrs. indicated that the victim committed suicide. A statement of the erstwhile S.P., Purba Medinipur, given to the media is also referred. The registration of an FIR about 3 years later, is malicious. It is also submitted that a murder investigation was started against the petitioner, pertaining to an incident that was closed 3 years ago, only with a view to malign, harm and victimize the petitioner by implicating him in a false and frivolous investigation. No preliminary enquiry was even conducted by the police prior to registration of the said FIR.

The 5<sup>th</sup> proceeding against the petitioner was registered suo moto by the Officer-in-Charge, Tamruk PS on 19<sup>th</sup> July, 2021 under Sections 341/186/187/188/189/263/270//295A/506 and 120B of the IPC. It is alleged that the petitioner in course of political rally made inflammatory speeches to hurt and cause insult to the religious sentiments and feelings of certain communities and also threatened the SP, Purba Medinipur.

It is submitted that associates of the petitioner, namely, Gobinda Hazra and Dhyanesh Narayan Guha, have also been implicated in a series of motivated and false cases. The said Gobinda Hazra has approached this Court under Article 226 of the Constitution of India in WPA 11326 of 2021. By an order dated 19 July, 2021, this Court has ordered stay of investigation into 7 FIRs registered against the petitioner, from April to June, 2021. The said Hazra who was in custody was ordered to be released.

Similarly, another associate of the petitioner Dhyanesh Narayan Guha had also approached this Court claiming victimization by the State as also approached by this Court by way of WPA 11032 of 2021. By an order dated 8<sup>th</sup> July, 2021, this Court had ordered that the Gaighata PS would not arrest the writ petitioner without leave of this Court. The State

was called upon to furnish particulars of all FIRs registered against the said Dhyanesh Narayan Guha to be submitted to the Court.

After the writ petition was filed Panskura PS Case No. 375 and 376 were registered. The said cases are by and against the petitioner.

In the factual background above, the petitioner seeks quashing of all the FIRs. Alternatively, it is submitted that the petitioner has no faith in the State police any further and sought transfer of such investigation in the above 6 cases against him to the CBI.

Learned Advocate General was allowed to address first on the demurrer raised. A two-fold objection is taken. Firstly that the petitioner's remedy for quashing FIR and for transfer of the investigation to CBI should be agitated under Section 482 of the Cr.PC. When such alternative remedy is readily available, Article 226 of the Constitution of India need not be invoked by the petitioner.

Reliance placed on the decision of the Supreme Court in the case of **Pepsi Food Ltd. and Anr. Vs. Special Judicial Magistrate and Ors.** reported in **(1998) 5 SCC 749**, particularly Paragraph 22 thereof. Reliance is also placed on **T.C. Thangraj Vs. V. Engammal** reported in **(2011) 12 SCC 328**

paragraphs 9, 10, 11 and 12 thereof. Reliance is also placed on **State of Punjab Vs. CBI reported in (2011) 9 SCC 182** paragraphs 32 thereof. Reliance is also placed on **Subrata Chattaraj Vs. UOI reported in (2014) 8 SCC 768**.

In answer to the demurrer, Mr. Patwalia, Counsel for the petitioner, placed paragraphs 21, 22 and 26 of the **Pepsi Food decision (supra)**, which is set out hereinbelow:

**“21.** The questions which arise for consideration are if in the circumstances of the case, the appellants rightly approached the High Court under Articles 226 and 227 of the Constitution and if so, was the High Court justified in refusing to grant any relief to the appellants because of the view which it took of the law and the facts of the case. We have, thus, to examine the power of the High Court under Articles 226 and 227 of the Constitution and Section 482 of the Code.

**22.** It is settled that the High Court can exercise its power of judicial review in criminal matters. In *State of Haryana v. BhajanLal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers

could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

**26.** Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.”

The decision of **Arnab Goswami Vs. UOI reported in (2020) 14 SCC 12** paragraph 57 has also been placed. A recent decision in the case of **Kapil Agarwal Vs. Sanjay Sharma reported in (2021) 5 SCC 524** has also been relied upon. Para 18 as a whole is set out hereinbelow.

**“18.** However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 CrPC. In that case, the complaint case will proceed further in accordance with the provisions of the CrPC.

**18.1.** As observed and held by this Court in a catena of decisions, inherent jurisdiction under Section 482 CrPC and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of inherent powers, such proceedings can be quashed.

**18.2.** As held by this Court in *ParbatbhaiAahir v. State of Gujarat* [*ParbatbhaiAahir v. State of Gujarat*, (2017) 9 SCC 641 : (2018) 1 SCC (Cri) 1] , Section 482 CrPC is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution.”

It is clear and evident from the above that a conjoint reading of the dicta of the Supreme Court in **Arnab Goswami (Supra) and Kapil Agarwal (supra)** would clarify that the dicta of **Pepsi Food decision (supra)** must be understood in the light of the above two decisions. A summary of the dicta appears to be as follows :-

a) The jurisdiction of the High Court under Article 226 and 227 of the Constitution of India is a part of the basic structure doctrine and cannot be taken away by any subordinate legislation.

b) Section 482 of the Cr.P.C. confers the power on the High Court to quash the proceedings initiated in abuse of law. Remedies in the nature of Sections 438 and 439, Cr.P.C. are also available to a person to seek liberty against likely or actual deprivation thereof. However, the power of the High Court under Articles 226 and 227 cannot under any circumstances be abridged by any provision of the Cr.P.C.

c) The jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India is not circumscribed by any alternative and efficacious remedy under the provisions of the Cr.P.C.

d) A proceeding for quashing of abusive proceedings and for liberty from incarceration and

custody is maintainable under Article 226 of the Constitution of India notwithstanding the provisions of the Cr.P.C. like Sections 482, 437, 438 and 439.

e) The maintainability of such petition should not be confused with entertainability. It is however a different question as to whether the writ petition will be entertained and/or maintainable in the given facts and circumstances.

f) Transfer of the proceedings to the CBI from the State police or to an independent agency can be ordered both under Section 482 Cr.P.C. and under Article 226. It is a given facts that a Court under Article 226 would entertain such prayer.

In view of the above, this Court is of the view that the writ petition and the prayers made thereunder are eminently maintainable.

Learned Advocate General on merits submitted that the petitioner is not a named accused in the Manicktala P.S. No. 28 of 2021 and Contai P.S. Case No. 248 of 2021. No relief can therefore be sought in respect of the said proceeding. It is submitted that in respect of Manicktala P.S. Case No. 28/21, this Court did not interfere with the investigation into the FIR. It however, appears to this Court that combined reading of all six cases against the petitioner, are directly or indirectly linked to the petitioner and/or his close

associates who profess the ideology of one political party.

It is next submitted that the withdrawal of security given to the petitioner by the State was not done over night. Since after shifting of the political allegiance, petitioner was granted personal security by CRPF. The state did not see the need of double security to the petitioner and hence the security provided by State was reduced in gradual and tapered manner.

The Ld. Advocate General next argued that Nandigram PS Case No. 110 of 2021 had nothing to do with the petitioner's change of political party and was an incident arising out of the events that occurred during election campaign.

In respect of Tamluk PS Case no. 595 of 2021, it is submitted that petitioner and his associates in fact had threatened the SP with dire consequences and it was an incident that was witnessed by a lot of people.

It is argued that by reference to Para 40, 44, and 47 of the decision of **Bimal Gurung vs. State of West Bengal** reported in **2018 (15) SCC 480** that bias can only be alleged against an individual. Such person has to be named and impleaded in the writ petition. The petitioner's allegation of bias therefore cannot be sustained. By reference to paragraph 53 and the

criteria specified thereat it is argued that malicious prosecution has not been established by the petitioner.

This Court notes that 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 next argument of the Advocate General is that on the basis of allegations of bias, persecution and political vendetta relief can be sought under Section 438 of the Cr.PC. The answer to the above

argument has already been dealt with hereinabove in preliminary objection raised by the State.

Learned Advocate General next argued that transfer of investigation is sought primarily by the victim of a crime. The basis of such transfer is inadequate investigation into the crime perpetrated upon the victim.

This Court is of the view that a prayer for transfer of investigation cannot be restricted, to be sought only by a victim of a crime. An accused can equally be prejudiced by a biased investigation or malicious prosecution and can, therefore, seek transfer of investigation.

In respect of Contai P.S. case No.248 of 2021, the learned Advocate General by reference to the GD Entry No. 696 of 2018 with Phoolbagan P.S. submitted that UD case No. 45 of 2018 was registered on 14 October, 2018 after the security guard died. A magisterial inquest was done along with post mortem. It, therefore, cannot be said no preliminary inquiry as mandated in the decision of **Lalita Kumari (supra)** was made by the police before registration of the FIR. There was sufficient evidence before the police and there was no need for any preliminary enquiry.

This Court finds that the Contai PS did not even bother to enquire as to what cause the delay of 3 years in the victim's wife to register a complaint of murder

that was originally treated as suicide. Mere non-closure of UD case is neither enough nor would it ipso facto entitle the Contai PS to register the FIR.

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 2<sup>nd</sup> 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 a preliminary enquiry as regards delay in lodging of the complain. This 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 RakhalBera, 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.

Panskura Police Station Case No. 375 of 2021 and 376 of 2021 shall also remain stayed.

The State shall furnish information as regards any further FIR registered against the petitioner. The State shall also obtain leave of this Court before

arresting the petitioner or taking with any coercive action against the petitioner in all such cases.

The Investigating Authorities shall, as far as possible, considering the public responsibilities of the petitioner, accommodate him, if he is required to give any statement, from a place and time convenient to him.

Learned Advocate General prays for stay of operation of the aforesaid order.

Considering the entire facts and circumstances of the case, the prayer for stay is considered and refused.

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

Liberty to mention after completion of pleadings.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**(Rajasekhar Mantha, J.)**