

DL-19

17.05.2024
Court No.14
(AD)

WPA 14205 of 2024

**Piyali Das @ Mampi Das
Vs.**

The State of West Bengal & Ors.

*Mr. Rajdeep Mazumder
Mr. Moyukh Mukherjee
Mr. Pritam Roy
Ms. Sagnika Banerjee*

... for the petitioner

*Mr. Kishore Dutta,
Ld. Senior Advocate & Ld. Advocate General
Mr. Amitesh Banerjee,
Ld. Senior Advocate & Senior Standing Counsel
Mr. Debangshu Dinda*

... for the State.

1. This is an application, inter alia, praying for quashing of Sandeshkhali Police Station Case No.221 of 2024 dated 07.05.2024.
2. Copies of Orders dated 09.05.2024 and 14.05.2024 passed by the learned ACJM, Basirhat, North 24 Parganas in G.R. Case No.1955 of 2024, as filed in Court, be taken on record.
3. Learned Counsel appearing on behalf of the petitioner submits as follows. The petitioner had taken active role in the Sandeshkhali agitation regarding sexual exploitation of women and land grabbing by one Sajahan Sk and his accomplices. Subsequently, she learnt that, as a counter measure, Sandeshkhali Police Station Case No.221 of 2024 dated 07.05.2024 has been

started against her and others under Sections 448, 341, 323, 325, 509, 506, 34 of the Penal Code. Although, no notice was served on the petitioner under Section 41A of the Code yet, she found that a notice was pasted on the wall of her residence. The notice never mentioned about any offence under Section 195A of the Penal Code. On 09.05.2024, the FIR was forwarded to the learned Magistrate. Later on, a prayer was being made to add Section 195A of the Code. The case diary was not produced. But, the provision was added. Thinking that the case was only under the bailable provisions as mentioned in the notice under Section 41A of the Code, the petitioner went to the concerned Court to surrender and obtain bail. On 14.05.2024 when she surrendered on the basis of a notice under Section 41A, she was told that Section 195A of the Penal Code was also there. Although the case diary was not produced at that time, she was taken into custody and remanded. Later on, the CD was produced for the purpose of deciding whether interrogation should be allowed while in judicial custody. On 15.05.2024, a prayer was made by the police authority for production and 12 days' police custody. This is a complete abuse of the process of Court. In *Salib alias Shalu alias Salim vs. State of U.P. and Others reported at 2023 SCC OnLine*

SC 947, the Hon'ble Supreme Court made the scope and ambit of Section 195A of the Penal Code absolutely clear. It can only apply when a complainant or a witness is threatened during trial to give false evidence. It is not meant for any other kind of pressure on any witness, including for withdrawal of the complaint or the like. This has been relied upon by this Court on a number of occasions. Yet, it appears that neither the police nor the learned Magistrate thought of adhering to the principles laid down by the Hon'ble Apex Court. In *Arnab Manoranjan Goswami vs. State of Maharashtra & Others* reported at 2020 SCC OnLine SC 964, the Hon'ble Apex Court affirmed the power of a Writ Court to grant bail under Article 226 of the Constitution of India.

4. Learned Advocate General representing the State submits as follows. For challenging an order passed by a regular Criminal Court, there are other means. Ordinarily, the Writ Court should not entertain such challenge. A *Prima facie* case is made out against the petitioner on the allegations leveled. Notice was given under Section 41A of the Code, but was not complied with.
5. Case diary is present.
6. It appears that initially a case was started against the petitioner under bailable Sections. A notice

was pasted on the wall of the petitioner's residence to that effect. Naturally, the petitioner went to the Court to surrender and obtain bail on bailable Sections. There, she was surprised to find that a charge of Section 195A of the Penal Code was also added. The mere fact that she was taken by surprise may not cast much suspicion on the manner in which investigation was being carried out though the circumstances may have to be explored at a later stage.

7. However, it is now a settled position of law that in view of *Salib alias Shalu alias Salim (supra)*, Section 195A of the Penal Code would apply only in case there is an allegation that a witness or a complainant was threatened to give false evidence in a court of law. It was also made clear there that it would not apply to a case where, for instance, a complainant is threatened to withdraw his or her case.
8. This decision has been relied upon by this Court on so many occasions to stay proceedings under Section 195A of the Penal Code. Yet, the police does not seem to have noted the ratio laid down by the Hon'ble Apex Court.
9. It is even more unfortunate that the learned Magistrate too missed the point.
10. It may be germane to mention that on a number of occasions, the Hon'ble Apex Court has

emphasized how precious an individual's liberty is. The question of bail and remand should be considered with due care and caution. In fact, remanding an accused cannot be an empty formality.

11. It does not appear that the only non-bailable charge of Section 195A of the Penal Code is even *prima facie* made out as no applicable allegation has been leveled in terms of such provision, especially when read in the light of decision in Salib's Case (supra). Yet, the petitioner was taken into custody on the basis of such allegation and is still languishing in custody.
12. In such exigent circumstances, this Court intends to exercise its exceptional power to release the petitioner on interim bail in connection with the case.
13. In view of the above discussions, the impugned proceeding shall remain stayed so far as Section 195A of the Penal Code is concerned.
14. Considering that the other charges are bailable, let the petitioner be released forthwith from custody on interim bail on her personal bond.
15. Opposition, if any, be filed within three weeks from this date. Reply, if any, be filed within a week thereafter.
16. List this matter under the heading "Specially Fixed Matter" on 19th June, 2024.

17. Investigation shall continue, albeit, under the supervision of concerned Superintendent of Police of the District. However, no report in final form shall be filed without leave of this Court.
18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Jay Sengupta, J.)