

01.04.2020

(Unlisted)

[via video conference]

(S. Banerjee)

W.P. 5326(W) of 2020

Dr. Indranil Khan

Versus

State of West Bengal & Ors.

Mr. Lokenath Chatterjee,
Mr. Indrajeet Dasgupta,

... learned advocates for the petitioner

Mr. Abhijit Paul,

(representative of DG's office and ASI of West
Bengal Police)
...For the State.

This application is entertained on the express undertaking of the petitioner to comply with all formalities regarding filing including stamping and punching of the petition immediately upon resumption of normal court business.

Considering the urgency shown by Mr. Chatterjee, learned advocate, this writ petition is taken up as an unlisted motion, in the presence of an officer of the respondents.

The petitioner is a medical practitioner specialised in oncology .
He enjoys private practice.

The allegation in the writ petition is harassment of the writ petitioner by the police in connection with FIR No. 154 dated 29th March, 2020 registered with the Maheshtala Police Station.

On hearing learned counsel for the petitioner and the departmental representative it appears that the writ petitioner had made several Facebook posts concerning the allegedly deficient protective gear supplied by the government to its doctors attending COVID-19 virus affected patients in its hospitals.

The charge against him as I understand is causing disharmony and feeling of hatred which disturb public tranquility for which he has been booked principally under Section 153A of the Indian Penal Code.

He was called by the police for a lengthy interrogation on 29th March, 2020. His allegation is that his mobile phone and SIM card, as described in paragraph 'f' of the petition, have been seized by the police.

I have gone through the Facebook postings. I notice that there is a reply to the Tweet made by the writ petitioner by the Department of Health and Family Welfare thanking the writ petitioner for highlighting the matter (page 38 of the petition).

Freedom of speech and expression which is granted under Article 19 of the Constitution of India has to be scrupulously upheld by the State. If an expression of opinion brings the government into disrepute, it cannot defend this allegation by intimidation of the person expressing the opinion by subjecting him to prolonged interrogation, threatening arrest seizing his mobile phone and SIM card and so on. It can do so if a citizen tries to utilize this freedom by trying to circulate alleged facts maliciously with a view to causing damage to another

person or to the public at large or the nation. This could be done by unnecessary spread of fear and panic among the public for the above reason.

Prima facie, these ingredients of offence are lacking in the case for the above reason.

In those circumstances I pass an order directing the Officer-in-Charge, Maheshtala Police Station to immediately return the mobile phone and SIM card of the writ petitioner to him.

I also direct that there shall be no further interrogation of the writ petitioner without the leave of a proper court.

The respondents may start a criminal case against the writ petitioner without arresting him, if at all the evidence prima facie discloses an offence. The liberty of the petitioner can only be curtailed by orders of the said court to be passed in a properly instituted proceeding. For the time being the writ petitioner is restrained from making any posting in his Facebook concerning the above issue.

Nothing remains of this writ application. It is accordingly disposed of.

All parties are to act on a server copy of this order on the usual undertakings.

(I. P. Mukerji, J.)