

AB 4597/2012

PRESENT

HON'BLE MR JUSTICE A C UPADHYAY

This is an application under Section 438 CrPC seeking pre-arrest bail on behalf of petitioner Sharvasri Aloke Kanta Mani Thulung and Kishmat Chhetri in connection with Darjeeling Sadar PS Case No 89/2010 (registered under section 147, 148, 149, 427, 506, 302, 120B & 34 IPC, which was subsequently converted to CBI/SCB/Kolkata RC No 01/S/2011(registered under section 147, 148, 149, 427, 506, 302, 120B & 34 IPC).

I have heard Mr P Pathak, learned senior counsel for the petitioners and Mr BB Gogoi, learned Addl.PP, Assam.

It is submitted on behalf of petitioners that they are active members of Gorkha Janamukti Morcha and for organizational works, taking a home on rental, they are residing in Guwahati, since May, 2010. Sometimes in October, 2012, when petitioner 1 contacted his relatives at Darjeeling, he was informed that police was searching him and the petitioner 2 in connection with Darjeeling Sadar PS Case No 89/2010. In the later part of October, 2012, on contacting people at Darjeeling, they were informed that CID, WB had filed charge-sheet showing them and 10 others as absconder in the aforementioned case. Subsequently, on a writ petition filed at Calcutta High Court, the case was handed over to CBI for investigation. Since then the CBI is looking after the case.

It is also submitted that names of the petitioners figured in charge-sheet 76/10 filed by CID before CJM, Darjeeling and they are residing in Assam, and are now apprehending arrest within the North-eastern states, notably in Assam.

Learned counsel for the petitioners submits that petitioners are in no way connected with the case and there is no adverse insinuation against them in the brief history prepared by DSP, CBI, Kolkata.

From a perusal of materials on record, it appears that petitioners are temporarily residing in Assam. As per the report submitted by CBI, Special Crime Branch, petitioners are permanent residents of Darjeeling, W.B..

Mr P Pathak, learned senior counsel, referring to a decision of High Court of Delhi in Pritam Singh v. State of Punjab, reported in 1980 CriLJ 1174, submitted that since the petitioners are permanent residents of Assam, they may be extended the privilege of pre-arrest bail to enable them to appear at trial court to face the trial. However, in Pritam Singh(supra), the High Court granted the privilege of pre-arrest bail to petitioners-therein finding no sufficient incriminating materials warranting their custodial interrogation.

It appears from the report submitted by CBI that petitioners are permanent residents of Darjeeling, WB and the offence alleged against them is very serious in nature and charge-sheet was also submitted by CBI showing them as absconder. In view of the above, the decision in Pritam Singh(supra) cannot be relied on to extend the relief sought for.

In the facts and circumstances of the case, I do not find it to be a fit case to extend the privilege of pre-arrest bail to petitioners in connection with this case and hence the prayer for pre-arrest bail submitted on behalf of petitioners is rejected.

The petitioners are at liberty to appear before the appropriate forum to face the trial.