

OPERATIVE PORTION OF ORAL ORDER

The interim relief as sought for by the petitioner is granted.

The petitioner is ordered to be released from the custody, forthwith, subject to condition that he shall make himself available for investigation before the Investigating Officer as and when required at all reasonable times.

Sri. B. A. Belliyappa, learned State Public Prosecutor-I takes notice for respondent Nos.1 to 4.

2. Heard Sri. Sandesh J Chouta, learned senior advocate for the petitioner and Sri. B. A. Belliyappa, learned State Public Prosecutor-I for the respondents on office objections, as well as on interim prayer. Perused the materials on record.

3. The FIR came to be registered against the petitioner on the basis of first information lodged by the informant alleging commission of offences under Sections 75 and 79 of The Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'). It is to be noticed that the informant as well as the accused are the peoples' representatives, as the informant is the sitting MLA and the minister in the present cabinet. The petitioner is the present MLC and the former minister. The informant is alleging that the petitioner being MLC has referred to her as prostitute and made indecent gestures inside the Legislative Council, Suvarna Soudha, Belagavi. Immediately, after registration of FIR, the petitioner was apprehended by the police.

4. The main contention taken by the learned senior advocate for the petitioner is that Section 75 (1) (i) to (iii) of BNS is punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both and Section 75(1) (iv) of BNS is punishable with either description for a term which may extend to one year, or with fine, or with both. Section 79 of BNS is punishable with simple imprisonment for a term which may extend to three years, and also with fine. In any case, the direction issued by the Hon'ble Apex Court in Satender Kumar Antil Vs Central Bureau of Investigation and Another , is applicable as the offences are punishable with less than 7 years of imprisonment, as it falls under the categories of B & D, where the law mandates for issuance of notice under Section 41-A of Cr.P.C., and the present Section 35 of BNSS, as per the dictum of the Hon'ble Apex Court in Arnesh Kumar Vs State of Bihar . It is the specific contention of the learned senior advocate that no such notice as required under Section 41-A of Cr.P.C, the corresponding provision under Section 35 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'the BNSS') is issued.

5. Even though, learned State Public Prosecutor-I disputes the fact of non-issuance of notice as required under Section 35 of BNSS, no materials are placed before the Court to suggest compliance of the same.

6. Learned senior advocate has placed reliance on the decision of the Hon'ble Apex Court in Prabir Purkayastha Vs State (NCT of Delhi) , to contend that when there is a prayer for declaration that the arrest of the petitioner is illegal and in

gross violation of the fundamental rights of the petitioner, guaranteed under Articles 21 and 22 of Constitution of India, the petitioner is entitled for release. He also submitted that the petitioner is not informed about the reasons for arrest or the grounds of arrest as distinguished by the Hon'ble Apex Court and therefore, it is the contention of the petitioner that the petitioner is entitled for direction for his release from custody by applying the ratio of the judgment rendered by the Hon'ble Apex Court in Pankaj Bansal Vs Union of India.

7. Learned senior advocate also placed reliance on the decision of the Hon'ble Apex Court in Arnab Manoranjan Goswami Vs State of Maharashtra and Others , to contend that by invoking the power exercising the jurisdiction under Article 226 of Constitution of India, the petitioner is entitled for his release forthwith, as the arrest itself is illegal.

8. Per contra, it is the contention of the learned State Public Prosecutor-I that since the criminal case was registered, the police have rightly apprehended the petitioner. He is not able to get necessary instructions as to whether the notice under Section 35 of BNSS was issued and whether the reasons for arrest and grounds of arrest of the petitioner were communicated or not. However, he contends that since the petitioner has already filed bail application in CrI.Misc.No.11740 of 2024, which is pending on the file of the learned LXXXI Additional City Civil and Sessions Judge (Special Court for case against MLA and MP), Bengaluru (CCH-82), he is not entitled for any relief in the present case, as the efficacious remedy is already availed by him.

9. Considering the facts of the present case in the light of the rival contentions, it is unfortunate to state that both the complainant and the petitioner are the peoples' representatives and the incident in question is said to have occurred inside the Legislative Council at Suvarna Soudha, Belagavi. Even if the allegations made against the petitioner is to be accepted for invoking Sections 75 and 79 of BNSS, since the offences are punishable with less than 7 years of imprisonment, the police are required to follow the procedure as contemplated under Section 35 of BNSS, and are required to serve the memo highlighting the reasons for arrest and grounds of arrest. Prima facie, nothing has been placed before the Court to satisfy any of these requirements.

10. Moreover, the petitioner has produced Annexure-B - the photograph said to be of the petitioner to contend that he was treated brutally by the police, as a result of which, he sustained bleeding injury on his head. On perusal of the memo produced by the learned counsel for the petitioner, it discloses that the petitioner was taken to Primary Health Centre, Mutaga, Belagavi District, where he was treated as outpatient on 20.12.2024. But unfortunately, the certificate issued by the Medical Officer do not highlight any injury or its nature. The certificate do not disclose the identity of the police officer who produced the petitioner for medical examination nor it disclose the history of the injury said to have been sustained. But, however, he recommended for CT scan of the head to rule out any internal injury.

11. Learned counsel for the petitioner has also produced Annexure-C, according to which, the Speaker of the Legislative House has referred to the allegations made by the informant against the petitioner and stated that no such words said to

have been uttered by the petitioner was recorded.

12. If the incident as alleged had occurred, it is very unfortunate for the State. Even then the Police are not required to manhandle the petitioner nor they could have apprehend him. They are duty bound to follow the procedure as contemplated under Section 35 of BNSS. There is no explanation for non compliance of the same.

13. In view of the above, I am of the opinion that prima facie case are made out by the petitioner for his release, forthwith. Admittedly, the petitioner is the sitting MLC of the opposition party and the informant being the sitting MLA and the cabinet minister, his abscondence or tampering with the evidence or witnesses would not arise. He would be made available for investigation by the Investigating Officer. Hence, the interim relief as sought for by the petitioner is to be granted to avoid further miscarriage of justice.

14. Hence the following.

ORDER

The petitioner is ordered to be released from custody, forthwith, subject to condition that he shall make himself available for investigation before the Investigating Officer as and when required, at all reasonable times.