

I.A. No. CAN/1/2021
With
I.A. No. CAN/2/2021
With
I.A. No. CAN/3/2021
With
I.A. No. CAN/4/2021
With
I.A. No. CAN/5/2021
In
WPA 10504 of 2021

CBI ACB Kolkata
Vs.

Shri Firhad Hakim @ Bobby Hakim & Ors.

Mr. Tushar Mehta, Solicitor General of India
Mr. Y.J. Dastoor, Additional Solicitor General of India
Mr. Samrat Goswami, Advocate
...for the petitioner and Applicants in CAN 5 through V.C.

Dr. Abhishek Manu Singhvi, Senior Advocate
Mr. Kalyan Bandopadhyay, Senior Advocate
Mr. Sandip Dasgupta, Advocate
Mr. Niladri Bhattacharya, Advocate
Mr. Ayan Kumar De, Advocate

... for the applicants in CAN Nos.1,3 & 4
through V.C.

Mr. Siddharth Luthra, Senior Advocate
Mr. Debayan Sen, Advocate
... for the respondent in CAN No.2 of 2021
through V.C.

Mr. Kishore Dutta, Advocate General,
Mr. Abhratosh Majumder, Addl. Advocate General,
Mr. Sayan Sinha, Advocate
...for the State through V.C.

Dated: May 19, 2021

Rajesh Bindal, CJ(A):

1. I have gone through the order passed by Arijit Banerjee J. for grant of interim bail to the accused. I would like to only add that, as noticed in the earlier order recorded, the arguments in the application for recalling the earlier order dated May 17, 2021 are still being heard. Even the counsel for one of the accused has not completed

his arguments. In response the arguments of the counsel for the CBI are yet to be heard. Hence, to find out a prima facie case at this stage would be premature, especially when the cases are being taken up on day to day basis. Interim relief prayed for is in the kind of final relief.

2. The situation in which we had passed the order was quite different and unprecedented, as was even admitted by counsels for both the parties. Efforts were made by the counsels for the accused to justify the same in their own way. Extraordinary situations need extra-ordinary solutions.

3. The reasons why this court had to pass an order staying order of bail granted to the accused were unprecedented. Whether mobocracy, where any law enforcing agency was allegedly obstructed in discharge of its official duty, can have impact on decision or the decision making process, is yet to be gone into. Issue regarding access to justice is to be examined, where the allegations are that the CBI officers were even denied access to court. Arguments of the CBI that entire proceedings for grant of bail before the trial court were vitiated on account of unprecedented protests led by the Chief Minister in the office of CBI and by the Law Minister in the court complex, are yet to be examined. These have direct bearing on the 'public trust and confidence of the people in the judicial system' and the rule of law versus the mobocracy. Legal issues cannot be allowed to be raised and settled in streets, as these are not decided by show of strength but on merits of the controversy in accordance with law, for which robust judicial system is available.

4. Prayer by CBI for transfer of the cases is also pending consideration.

5. But still I find that considering the age and health issues of the accused, three of whom are said to be admitted in hospital, instead of custody in jail, they can be put under house arrest in their own homes. This court finds that the guidance in this regard given by Hon'ble the Supreme Court in **Criminal Appeal No. 510 of 2021, decided on May 12, 2021** in case titled as **Gautam Navlakha vs. National Investigation Agency**, are fully applicable in these cases. During their house arrest, while being in home comfort, they shall be entitled to all medical facilities and shall be bound by all applicable restrictions, however, it shall be the duty of the jail authorities in the State to enforce the conditions. Any violation thereof can result in recall of this order.

[Rajesh Bindal, CJ(A)]