

Form No. J(2)
Item No. DL / 12
RANAJIT – A.R.(CT)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
(Appellate Side)

W.P.A. NO 15545 OF 2026

Nirmal Ghosh & Anr.

-Vs-

The State of West Bengal & Ors.

BEFORE: THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

For the Petitioners : Mr. Arka Pratim Chowdhury,
Mr. Samrat Saha,
Ms. Aishwarya Roy,
Mr. Swattik Batabyal

For the State : Mr. Suryaneel Das,
Mr. Rajdeep Mantha

For the Respondent No.5 : Mr. Bikram Banerjee,
Ms. Sagarika Goswami

Hearing concluded on : 04.08.2026

Judgment on : 04.08.2026

SAUGATA BHATTACHARYYA, J.:

1. Supplementary affidavit filed on behalf of the petitioners is taken on record.

2. By presenting this writ petition, *inter alia*, petitioners have prayed for quashing of criminal prosecution being Khardah Police Station Case No.342/26 dated 26th June, 2026. It is submitted that one Lakhhi Sarkar being the defacto-complainant and respondent no.5 lodged complaint on 26th June, 2026 alleging that by applying force petitioners took away one lottery ticket in 2024 based on which previously a criminal prosecution was initiated being FIR No.624 dated 14th November, 2024 taking note of complaint of husband of respondent no.5.
3. It is submitted that in connection with said previous criminal prosecution FRT was filed and issue was settled. Therefore, concerned police authorities are estopped from initiating fresh criminal prosecution. It is further contended that considering this aspect one accused in Khardah Police Station Case No.342/26 dated 26th June, 2026 was enlarged on bail vide order dated 23rd July, 2026 passed by Additional Sessions Judge, 1st Court, Barrackpore, North 24 Parganas.
4. Reliance is placed on the observations made by Additional Sessions Judge, 1st Court, Barrackpore, North 24 Parganas in order to contend that on same set of facts initiation of second criminal prosecution is impermissible.

5. Mr. Das, learned Additional Government Pleader representing the State respondents has opposed this writ petition and it is submitted that present criminal prosecution being Khardah Police Station Case No.342/26 dated 26th June, 2026 is initiated based on complaint lodged by respondent no.5 who was not the complainant in the previous criminal prosecution, rather respondent no.5 is wife of defacto-complainant in previous criminal prosecution.
6. It is also submitted in reference to paragraph 6 of the order of Additional Sessions Judge, 1st Court, Barrackpore, North 24 Parganas passed on 23rd July, 2026 on a bail application of another accused that previous criminal prosecution was not closed based on settlement, rather investigating agency filed a closure report on 31st December, 2024 which was awaiting consideration of Judicial Magistrate.
7. Reliance is also placed on the statement made before the Judicial Magistrate under Section 183 of BNSS, 2023 by husband of respondent no.5 in connection with previous criminal prosecution which according to State respondents reveals that husband of respondent no.5 being the complainant therein was compelled to compromise since petitioners are influential persons.
8. In addition thereto, it is also submitted that both the petitioners have preferred pre-arrest bail application under Section 482 BNSS,

2023 and same is pending. However, it is submitted on behalf of the petitioners that petitioner no.2 has already been taken into custody. Therefore, pre-arrest bail application of petitioner no.2 becomes infructuous whereas pre-arrest bail application of petitioner no.1 is still pending.

9. Having considered the respective submissions made on behalf of the parties, Court needs to consider whether present writ petition would be entertained seeking quashment of criminal prosecution being Khardah Police Station Case No.342/26 dated 26th June, 2026 or not.
10. By lodging complaint it is alleged that petitioners committed offence requiring investigation by the concerned police authorities. However, it is argued on behalf of the petitioners that without reviving previous criminal prosecution being Khardah Police Station Case No.624 dated 14th November, 2024, initiation of separate criminal prosecution is not permissible.
11. At the same time, it is contended on behalf of the State respondents that though closure report was filed in connection with previous criminal prosecution but same is awaiting consideration by the Magistrate. In the subsequent criminal prosecution complaint is lodged by wife of defacto-complainant of previous criminal prosecution.

12. It is also found that both the petitioners are influential persons. Petitioner no.1 was Member of West Bengal Legislative Assembly at the material point of time. Contemporaneously, complaint was lodged by husband of respondent no.5 in November, 2024 just after the alleged incident centering around lottery ticket took place.
13. It is also alleged by the defacto-complainant in previous prosecution that due to pressure exerted upon him, he was compelled to settle the case but according to the State respondents closure report is yet to be accepted.
14. There is another issue needs consideration that petitioner no.1 has filed pre-arrest bail application which is pending before the appropriate forum. When facts are hazy and investigation is being continued based on complaint lodged by respondent no.5, this Court finds it apt not to interfere with the criminal prosecution specially in the context that there is an alternative remedy available to the petitioners under Section 482 BNSS, 2023 and same is availed of, pre-arrest bail application is pending before the appropriate forum.
15. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court, reported in **(2021) 19 SCC 401 (Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.)**. Paragraph 33.16 runs *infra*:-

“33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India.”

16. It was succinctly decided in ***Neeharika Infrastructure*** (supra) that High Court while exercising writ jurisdiction under Article 226 of the Constitution of India needs to exercise its power in deciding a writ petition seeking quashment of criminal proceeding sparingly and

with circumspection. It is not a routine procedure to pass order thereby granting protection to the petitioner or to issue mandamus declaring criminal proceeding void.

17. In aforesaid conspectus, present writ petition is not interfered with and same stands dismissed.
18. However, this order shall not preclude the petitioner no.1 to press pre-arrest bail application before the appropriate forum.
19. Petitioner no.1. shall also be at liberty to rely upon relevant judgments at the time of consideration of pre-arrest bail application.
20. Since this Court is apprised that petitioner no.2 has already been taken into custody, present writ petition seeking quashment of criminal prosecution becomes infructuous so far petitioner no.2 is concerned.
21. Case diary which is produced before this Court on behalf of the State respondents is returned back to Mr. Das, learned Additional Government Pleader.
22. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)