

22.01.2021
Court No 2
Item No.3
AGM

CRM 2958 of 2020
CRAN 1 of 2020

In Re : An application for anticipatory bail under Section 438 of the Code of Criminal Procedure.

And

In the matter of : **Subhankar Das. & Ors** Petitioners

Ms. Jeenia Rudra for the Petitioners

This is an application for modification of judgment and order dated 16th April, 2020 whereby the petitioners were directed to collectively deposit a sum of Rs. 40,000/- with the Arresting Officer as a condition precedent for grant of anticipatory bail.

The learned advocate for the petitioners submits that condition is onerous and they are financially poor to comply with such condition and, therefore, she seeks modification of the order for expunging that condition.

We are of the opinion that though the application has been couched as a modification application for substance, the petitioners sought to review the earlier order dated 16th April, 2020, which is not permissible.

It has been observed by the Hon'ble the Supreme Court in case of **Delhi Administration vs. Gurdip Singh Uban** reported in **(2000) 7 SCC 296** where it has been held as follows:-

“ It was held that by describing an application as one for ‘clarification’ or ‘modification’ though it is really one of review, a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in

the open court. What cannot be done directly cannot be permitted to be done indirectly. The court should not permit hearing of such an application for 'clarification', 'modification' or 'recall' if the application is in substance a clever move for review."

On the conspectus of the decision as relied hereinbefore, the application giving nomenclature, as modification should not be entertained if the real intention is to achieve the review of the order.

In view of the above, CRM 1 of 2020 is dismissed.

(Harish Tandon, J.)

(Kausik Chanda, J.)