

**CRM 8508 of 2020
with
IA No. 1 of 2020
(Via Video Conference)**

In re : An application for anticipatory bail under Section 438 of the Code of Criminal Procedure Burwan PS Case No. 44/2011 dated 10.02.2011 under Sections 399/402 of the Indian Penal Code and Sections 25/26 of the Arms Act and Sections 4/5 of the Explosives Substances Act.

In the matter of : **Nazrul Sk. & Anr.**

..... petitioners

Mr. Diptendu Banerjee

.....For the petitioners

**Mr. Pradipta Ganguly
Ms. Sukanya Bhattacharyya**

.....For the State

The petitioners undertake to affirm and stamp the petition as per the Rules within 48 hours of resumption of normal functioning of the court. The petition is taken up through video conference on the basis of such undertaking.

The petitioners claim that though they were not named in the original complaint, they have been falsely proceeded against and there is no material to link them to any dacoity or proposed dacoity.

The State says that both the petitioners were named in the original complaint and there are independent witness statements which indicate that these two were present at the spot when the raiding party descended on the miscreants, but these petitioners fled from the spot and have been absconding. The charge-sheet was filed sometime in 2014.

The petitioners contend that the entire case against them is without basis since no wrongdoing can be attributed to the petitioners.

According to the State, what is important in this case is that a group of persons was apprehended at the time when they were making explosives with the intention of using the same for a proposed dacoity. The State appropriately submits that once the petitioners' involvement with the gang is ascertained and there are credible statements that petitioners gave the raiding party the slip, the charges against the petitioners had to be looked into. The State emphasizes on the fact that these petitioners have been running from the law for long.

Since the raid in this case was conducted as a preventive measure, it is understandable that a part of what the State says and the case made out against the accused persons would be somewhat short of what the case would have been if the dacoity was already committed. Since prevention is better than cure, the State cannot be held to a higher test once it apprehends a gang preparing to commit a grievous offence.

There is sufficient material to show the petitioners' involvement with the other persons indulging in the preparation of explosives. The fact that the petitioners have been running from the law for such a long time weighs against any discretion being exercised in favour of the petitioners.

The prayer for anticipatory bail is refused. However, it shall be open to the petitioners to pray for regular bail upon first surrendering.

CRM 8508 of 2020 with the interim application therein stand disposed of.

(Aniruddha Roy, J.)

(Sanjib Banerjee, J.)