

CRM (A) 599 of 2022
(via video conference)

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

In the matter of : **Jalimuddin @ bhadua & Ors.**

..... petitioners

Mr. Asfak Ahammed

.....For the petitioners

Ms. Zareen N. Khan
Md. Kutubuddin
Mr. Ashok Das

.....For the State

Apprehending arrest in connection with Harishchandraur Police Station Case No. 842 of 2021 dated 16.11.2021 under Sections 341/324/325/354/379/308/34 of the Indian Penal Code, the present application has been preferred praying for anticipatory bail.

On the prayer of Mr. Ahammed, learned lawyer appearing for the petitioners, leave is granted to correct the cause-title of the application.

Mr. Ahammed submitted that the present petitioners are falsely implicated. No strong incriminating elements are against the present petitioners. It is nothing more than altercation and tussle between the parties resulting in simple injury. Therefore, custodial detention of the present petitioners is not necessary. Accordingly, he prays for anticipatory bail on any condition.

Mr. Das, learned lawyer appearing for the State invited our attention to the order passed by the learned Sessions

Judge, Malda dated 21st December, 2021 wherein it is observed that although injury is simple in nature as suggested in the injury report, it was considered as grievous by the Learned Court below. On this line and consideration, the application for anticipatory bail was rejected by the learned Sessions Judge.

On perusal of the materials on record, we find that injuries were sustained by the victim in course of tussle and fight. We are not able to find anything in the record to indicate that the injured was assaulted with any premeditated thought or design. We, however, discourage the assiduous endeavour of the Learned Sessions Judge to substitute medical opinion with his own opinion. On perusal of the case diary and other materials, we find that custodial detention of the present petitioners is not necessary. We are inclined to allow the instant application.

Accordingly, we allow this application and direct that in the event of arrest the petitioners, namely, **Jalimuddin @ bhadua, Guljar Ali, Jamila Bibi** and **Matiur Rahaman** shall be released on bail upon furnishing a bond of Rs.10,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Arresting Officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973.

It is further directed that the petitioners shall not tamper with the evidence and/or intimidate the witnesses.

They shall also attend learned Court below on all the dates, as specified for hearing.

In the event the petitioners fail to comply with the aforesaid directions, without any justifiable cause, the learned Court below shall be at liberty to cancel their bail, in accordance with law, without further reference to this Court.

The application for anticipatory bail, being CRM (A) 599 of 2022, is, thus, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)