

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

CRM 7652 of 2021

**PRATIK AGARWAL
VS.
THE STATE OF WEST BENGAL**

For the petitioner : Mr. Siddhartha Luthra, Ld. Senior Advocate
Mr. Debashis Roy,
Mr. Sabyasachi Banerjee,
Mr. Rudraman Bhattacharya
Mr. Nigam Ashish Chakraborty
Ms. Suchismita Ghosh,
Mr. Sehzan Hashmi
Mr. Agniva Banerjee
Mr. Karan Dudhewala, Advocates

For the de-facto : Mr. Sandipan Ganguly,
Mr. A. Bhattacharya, Advocates

For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P
Mr. Rudradipta Nandy, Advocates

Heard on : February 8, 2022

Judgment on : February 8, 2022

DEBANGSU BASAK, J.:-

1. Petitioner seeks anticipatory bail in connection with
Shakespeare Sarani Police Station Case No. 22 dated

28.01.2021 under Sections 341/323/376/506/354/34 of the Indian Penal Code corresponding to G.R.(S) Case No. 119 of 2021. The present petition was assigned to this Bench by the Hon'ble the Chief Justice on December 1, 2021.

2. Learned senior advocate appearing for the petitioner submits that the petitioner was falsely implicated. He refers to the complaint lodged by the de facto complainant. He submits that two incidents are alleged in the complaint of the de facto complainant – one is claimed to be occurring on February 25, 2020 and the other on December 26, 2020. The petitioner is not involved on the basis of the statements made in the complaint of the de facto complainant so far as the December 26, 2020 is concerned. He submits that, the complaint was lodged on December 27, 2020 and the First Information Report was registered on January 28, 2020. He highlights the delay in between the first incident and the lodgment of the complaint.

3. Learned senior advocate appearing for the petitioner submits that the police complaint is a result of a long pending civil dispute. There are disputes with regard to the Will of the

deceased father of the petitioner, Mahesh Agarwal dated December 14, 2019. It is claimed that the deceased father of the petitioner left behind a Will and testament under which, he bequeathed a major portion of his property in favour of nephew Sharad Agarwal and aunty Manju Agarwal and other persons with the natural heirs not being given due part of such estate. According to him, although the first incident is claimed to take place on February 25, 2020 and the locale of such incident is identified, the locale is a housing complex where in normal circumstances, an entry and exit ledger of the visitors to the flat concerned is maintained. The prosecution is yet to place any documents seizing such register showing that the de facto complainant entered into that premises on February 25, 2020 at all.

4. Learned senior advocate for the petitioner submits that, the police complaint can be said to be activated by the orders passed in the probate proceedings. According to him, attempts were being made by the so-called beneficiaries under the Will of the deceased father of the petitioner to take control of the estate of the deceased. In the probate proceedings,

several orders were passed. One of such orders is dated December 23, 2020 which is in close proximity with the date of the complaint being December 26, 2020. He submits that, Manju and Sharad Agarwal failed to obtain favourable orders from the probate Court with regard to the estate of the deceased and, therefore, caused the de facto complainant to institute the present police complaint. He submits that, there are complaints made by the mother of the petitioner against the attempts made to take control of the estate of the deceased. He refers to some of such complaints. He submits that the complaints are prior in point of time than the present police complaint.

5. Learned senior advocate appearing for the petitioner submits that the factual scenario in which the petitioner is sought to be implicated is different from the other co-accused who is still in custody. He submits that, in the facts of the present case, prayer for bail should be considered.

6. Learned Public Prosecutor appearing for the State draws the attention of the Court to the materials in the case diary. He relies upon the statements of the victim recorded under

Section 164 of the Code of Criminal Procedure. He submits that the statements of the victim so recorded are sufficient to constitute offences as alleged. The police require custodial interrogation of the petitioner for proper investigations. The police arrested the other co-accused and that such co-accused is still in custody. In response to the query of the Court as to whether the mobile phone of the other co-accused was seized or not, he answers in the affirmative. He submits that such mobile phone was sent to the Forensic Science Laboratory for report.

7. Learned Public Prosecutor appearing for the State relies upon **(1997) 7 SCC 187 [State rep. by the C.B.I vs. Anil Sharma]** and **(2019) 9 SCC 24 [P. Chidambaram vs. Directorate of Enforcement]** and submits that, since there is a requirement of custodial interrogation and considering the gravity of the offence and the involvement of the petitioner therein, prayer for anticipatory bail should be rejected.

8. Learned advocate appearing for the de facto complainant relies upon a written notes of arguments. He submits that, the petitioner is alleged to commit gang rape

upon the de facto complaint which provides for punishment of rigorous imprisonment for not less than 20 years and which can extend to life imprisonment. He submits that, the delay in lodging the First Information Report was explained by the de facto complainant. He highlights the fact that the de facto complainant comes from a poor economical background and due to disease and precarious health conditions of her husband there was some delay. The husband of the de facto complainant donated a portion of his liver to the deceased father of the petitioner. He submits that, the accused which includes the petitioner were threatening the de facto complainant. The accused including the petitioner took photographs of the de facto complainant and threatened the de facto complainant of releasing the same on the Internet, if the de facto complainant went to the police and complained about the gang rape. According to him, the accused person is influential and powerful and, therefore, in the event, the accused persons including the petitioner are enlarged on bail or anticipatory bail, there is likelihood of the de facto complainant being threatened all over again.

9. Learned advocate appearing for the de facto complainant submits that the co-accused was arrested on June 14, 2021 and continues to be in judicial custody. He highlights the fact that the petitioner approached the learned Chief Judge, City Sessions Court, Calcutta with a prayer for pre-arrest bail which was rejected on August 6, 2021. The present petition was thereafter filed. According to him, a proclamation was issued against the petitioner on November 23, 2021 and that subsequently, the learned Magistrate by an order dated December 7, 2021 recalled such proclamation. However, the learned Chief Judge, City Sessions Court at Calcutta by an order dated December 16, 2021 stayed the order of recall.

10. He submits that the contention of the petitioner that the present police complaint is counterblast to the probate proceeding is wholly unfounded. The de facto complainant is no way connected with the probate proceedings. The de facto complainant is not a beneficiary under the Will of the deceased. In fact, the husband of the de facto complainant donated a portion of his liver to the deceased.

11. Learned advocate appearing for the de facto complainant submits that the charge sheet establishes the complicity of the petitioner in the incident. According to him, there are close connections between the petitioner and the other co-accused who is in custody. He relies upon **(2021) 6 SCC 191 [Naveen Singh vs. State of Uttar Pradesh & Anr.]** and submits that prayer for bail should be rejected.

12. Learned senior advocate appearing for the petitioner, in reply, submits that **P. Chidambaram (supra)** was considered by the Supreme Court and effectively overruled in **(2020) 5 SCC 1 [Sushila Aggarwal & Ors. vs. State (NCT of Delhi) & Anr.]**. He submits that the husband of the de facto complainant is neither diseased nor of poor health as will appear from the general diary lodged by the co-accused with the police on December 26, 2020 relating to the incident created by the husband of the de facto complainant with the co-accused.

13. The present police case arose out of a complaint lodged by the de facto complainant on December 27, 2020. The police registered a First Information Report on the basis of

such complaint on January 28, 2021. In the complaint, the de facto complainant alleges of two incidents of rape – one of February 25, 2020 at Southern Avenue and the other on December 26, 2020 at the office of Haldiram at Exide Crossing. There is a connection between the de facto complainant and the petitioner herein. The connection is the husband of the de facto complainant who donated a portion of his liver to the deceased father of the petitioner, Mahesh Agarwal. There is a probate proceeding pending in respect of the estate of Mahesh Agarwal, since deceased. It is claimed in such probate proceeding that Mahesh Agarwala, since deceased, left behind a Will and testament dated December 14, 2019 whereby he bequeathed a portion of his estate to the petitioner and a major portion of the estate to the aunty Manju Agarwal and cousin Sharad Agarwal of the petitioner.

14. It appears from the complaint of the de facto complainant that, the petitioner is not involved in the second incident of December 26, 2020. The petitioner is sought to be involved in the first incident of February 25, 2020. The first incident is alleged to take place at Premises no. 87 Southern

Avenue, Kolkata which is apparently a housing complex. The police are yet to seize any materials to suggest that the de facto complainant entered such housing complex after registering herself in the register maintained in respect of visitors to such housing complex. It is not the case of the police that, the housing complex does not maintain any such register for visitors also.

15. In the probate proceedings, several orders were passed by the probate court. One of such order is dated December 23, 2020. Such order relates to the management of the estate of the deceased. There are the pending issues with regard to the management and administration of the estate of the deceased, Mahesh Agarwal. In terms of the order of the probate court, the management of the estate of the deceased vests with the widow of the deceased being the mother of the petitioner. There are complaints on recorded in this petition which suggests that the mother of the petitioner lodged various complaints with the police with regard to the efforts made by persons who are claiming through the Will of the deceased for the purpose of taking over the management and

control of the estate of the deceased. The police complaint of the de facto complainant is immediately after the order dated December 23, 2020 passed in the probate proceedings. The police complaint as noted above is dated December 27, 2020.

16. **Anil Sharma (Supra)** relates to anticipatory bail. In the facts of that case, the accused approached the High Court for anticipatory bail while the investigations were in progress. The Supreme Court found that the grant of the order of anticipatory bail by the High Court was misdirected and, therefore, set aside such order. **P. Chidambaram (Supra)** considers the power to grant anticipatory bail and the relevant considerations while exercising such discretion in particular reference to economic offences.

17. **P. Chidambaram (Supra)** and **Anil Sharma (Supra)** were both considered in **Sushila Aggarwal (Supra)** along with other authorities. **Sushila Aggarwal (Supra)** considered two issues referred to it, namely whether the protection granted under Section 438 of the Criminal Procedure Code should be limited to fixed period to enable the person to surrender and seek regular bail and whether the life of the anticipatory bail

should end at the time and stage when the accused is summoned by the Court. It answered the first question by holding that the protection granted under Section 438 of the Criminal Procedure Code should not be invariably limited to a fixed period. It answered the second question by holding that the life of an anticipatory bail order does not normally end at the time and stage when the accused is summoned or when charges are framed but can continue till the end of trial. It observed that, anticipatory bail can be granted, having regard to all the circumstances, in respect of all offences, unless there is a statutory bar or restriction in respect of the offence or offences concerned.

18. ***Naveen Singh (Supra)*** is on power to grant anticipatory bail. It is of the view that the seriousness of the offence is one of the relevant considerations while considering grant of anticipatory bail. In the facts of that case, allegations of forging Court documents were involved. The Supreme Court found that forging Court documents stands on a different footing than forgery between two private individuals.

It observed that, given the gravity of the offence mere filing of charge sheet is no ground for grant of bail.

19. Prayer for grant of bail in anticipation of arrest under 438 of the Criminal Procedure Code should be considered on the anvil of the nature and gravity of the offences, the complicity of the petitioner therein and the attending facts and circumstances of the case including the possibility of the petitioner fleeing justice, tampering with evidence, or influencing the course of the investigation. Unless categorically excluded or restricted by statute the power to grant bail in anticipation of arrest under Section 438 of the Criminal procedure Code remains with the Court. Such powers can be exercised in respect of all offences unless restricted or excluded.

20. In the facts of the present case, the petitioner being falsely implicated cannot be ruled out. There is a probate proceeding in respect of the estate of the deceased father of the petitioner. The probate proceedings are pending. The petitioner is shown to be one of the beneficiaries under the Will of his deceased father. Persons other than the petitioner

who would otherwise succeed to the estate of his deceased father were not allowed to succeed to such estate albeit monetary compensations as delineated in the Will of the deceased father being reserved for them. The probate proceedings in respect of the Will of the deceased father of the petitioner are hotly contested between Manju and Sharad Agarwal on one part and the mother of the petitioner on the other.

21. It is claimed by the petitioner that, the mother of the petitioner and his sister were present with Mahesh Agarwal, since deceased, at the time of his death in Singapore. The petitioner claims that one of his paternal aunt Manju Agarwal and his cousin Sharad Agarwal arranged for the husband of the de facto complainant to donate his liver to Mahesh Agarwal, since deceased. Manju Agarwal and Sharad Agarwal are joint executors of the Will dated December 14, 2019 of Mahesh Agarwal, since deceased, and are beneficiaries thereunder.

22. Attempts were made to dislodge the management of the estate of the deceased father of the petitioner. One of the

orders in the probate proceedings relating to the management of the estate of the deceased is the order dated December 23, 2020. The police complaint is dated December 27, 2020 which is in close proximity to the order dated December 23, 2020. The likelihood of the de facto complainant being set up to lodge the police complaint to falsely implicate the petitioner given the nexus between the de facto complainant and Manju and Sharad Agarwal cannot be ruled out with certitude. The conduct of the de facto complaint is intriguing. The de facto complainant cites economic duress as one of the reasons for the delay in the lodgment of the police complaint, yet is bestowed with admirable resources to hotly contest the prayer for bail in anticipation of arrest of the petitioner.

23. The police complaint dated December 27, 2020 is in respect of incidents which firstly happened on February 25, 2020 and secondly on December 26, 2020. The petitioner is not involved in the incident dated December 26, 2020 even on the basis of the complaint of the de facto complainant dated December 27, 2020. It is alleged as against the petitioner that the petitioner was part of the gang ravishing the de facto

complainant on February 25, 2020 and that the petitioner along with the other co-accused took offensive photographs of the de facto complainant. The mobile phone of the other co-accused was seized by the police. There is no material in the case diary suggesting that the mobile phone of such co-accused contained any offensive pictures of the de facto complainant as alleged by her.

24. Given the conspectus of the factual matrix obtaining in the present case and particularly in view of the probate proceedings and the nexus between the de facto complainant with the deceased the police complainant being a product of the rivalry in the probate proceeding cannot be ruled out. The possibility of the petitioner being falsely implicated through the de facto complainant to impact the probate proceedings cannot be ruled out also. Such being a plausible view of the situation, it would be appropriate to grant anticipatory bail to the petitioner, however, on terms.

25. The contention of the de facto complainant that the sole evidence of the de facto complainant may be found sufficient to hold the petitioner guilty, requires consideration.

Trial is yet to commence. Evidence of the de facto complainant may or may not lead to the petitioner being found guilty. At this stage and on the basis of the materials presently available the Court is not required to enter into such speculative realm. Moreover, the police submitted the charge sheet.

26. Accordingly, we direct that in the event of arrest the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand Only), with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on further condition that the petitioner shall appear before the Court below and pray for regular bail within a period of four weeks from date and on further condition that the petitioner shall appear before the jurisdictional Court on every date fixed for hearing and with a further condition that the petitioner will surrender his mobile phone which he was using at the relevant point of time with the Officer-in-Charge of the police station where the police complaint was lodged, forthwith.

27. Needless to say that the findings herein are prima facie, made for the purpose of considering the prayer for bail in anticipation of arrest and shall not prejudice any of the parties at the trial.

28. Prayer for anticipatory bail is **allowed**.

29. This application for anticipatory bail is **disposed of**.

(Debangsu Basak,J.)

30. I agree.

(Bibhas Ranjan De, J.)