

02.03.2022

COURT : 01
ITEM : 31
MATTER : 438
STATUS : ALLOWED
TRANSCRIBER : Saswata

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

CRM (A) 58 of 2022

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed in connection with Sitalkuchi Police Station Case No. 192 dated 04/07/2021 under Sections 447/341/324/325/326/354/307/34 of the Indian Penal Code.

And

In the matter of : **Naybar Ali @ Naybar Mia & Ors.**

...Petitioners

Mr. Satarudriya Mukherjee
Miss Sukanya Adhikary

...for the Petitioners

Mr. Tapan Bhattacharya
Ms. Namrata Das

...for the State

Apprehending arrest, the petitioners have filed the instant application for anticipatory bail in connection with Sitalkuchi Police Station Case No. 192 under Sections 447/341/324/325/326/354/307/34 of the Indian Penal Code.

According to the learned advocate for the petitioners, the incident took place as a result of a scuffle over the plot of land and right to possess and make cultivation thereupon. It is further submitted that the instant case has been initiated against the petitioners as a counterblast to the complaint lodged by the petitioners against the *de facto* complainant of this case.

Learned advocate for the State opposes the prayer for anticipatory bail and submits that the statements of witnesses recorded under Section 161 of the Code of Criminal Procedure would reveal the names of the petitioners as the prime accused and, therefore, they are not entitled for anticipatory bail.

We had an occasion to peruse the case diary and the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure. We further notice that some of the co accused, namely, Manir @ Nabir Miah, Chamir Ali @ Chamir Mia, Hamer Ali and Sahider Miya had been extended the benefit of Section 438 of the Code in CRM 1231 of 2021 on 07/01/2022. We find names of those persons mentioned by the witnesses in their

statements recorded under Section 161 of the Code. However, we find that names of some of the petitioners have also been disclosed by the said witnesses. There is no specific role attributable to the conduct of the petitioners which can make a differentiation with the other co accused who have been granted anticipatory bail. The allegation is omnibus in nature and attributable to the conduct of all the co accused.

We, thus, do not find any justification in refusing to extend the benefit of Section 438 of the Code of Criminal Procedure to the petitioners on the ground of parity.

As such, the prayer for anticipatory bail is ***allowed***.

Accordingly, in the event of arrest the petitioners namely **Naybar Ali @ Naybar Mia, Khaybar Ali @ Khaybar Mia, Anarul Mia, Nabiuddin Mia & Ali Mobarak** shall be released on bail upon furnishing a bond of Rs.10,000/- each, with two sureties like amount each, one of whom must be local to the satisfaction of the arresting officer on further condition as enshrined under Section 438(2) of the Code of Criminal Procedure and on further condition that the petitioners shall meet the Investigating Officer once in a week.

The application being CRM (A) 558 of 2022 is accordingly disposed of.

(Harish Tandon, J)

(Rabindranath Samanta, J)