

10.02.2023

Sl.7

Court No.29

(AD)

(Rejected)

C.R.M. (A) 585 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with CGR Case No.3576 of 2021 arising out of **South Port** Police Station Case No.**133 of 2021** dated **11.12.2021** under Sections **307/34** of the Indian Penal Code, 1860 read with Section **25(1B)(a)** of the Arms Act.

And

In the matter of: **Tousif Khan @ Md. Tousif @ Md. Tausif**
....petitioner.

Mr. Ayan Bhattacharya

Mr. Habibur Rahman

Mr. Apalak Basui

Mr. Nazir Ahmed

Mr. Swastik Samaddar

...for the petitioner.

Mr. T. D. Nandy

Mr. Antarikhya Basu

...for the State.

Mr. Anand Keshari

... for the de facto complainant.

Petitioner prays for anticipatory bail.

Learned Advocate appearing for the petitioner submits that co-accuseds were granted anticipatory bail by the jurisdictional Court. Application for cancellation was rejected. The police filed charge sheet and, therefore, custodial interrogation of the petitioner is not required.

State and the de facto complainant are represented.

Learned Advocate appearing for the State submits that the petitioner stands on a different footing as that of the other co-accuseds who were enlarged on anticipatory bail. The victim suffered grievous hurt. The petitioner is the main assailant as identified by eye-witnesses recording statements under Section 161 of the Code of Criminal Procedure.

There are materials in the case diary implicating the petitioner in the incident of assault.

Apparently, the petitioner is the principal assailant. He cannot be said to be standing on the same footing.

The application for cancellation was rejected on the ground that the error recorded in the order granting anticipatory bail was not the fault of the accused. Rejection of an application for cancellation *ipso facto* does not vest the petitioner with a right to obtain anticipatory bail.

In such circumstances, considering the gravity of the offence and the involvement of the petitioner therein, we are unable to grant anticipatory bail to the petitioner.

Accordingly, the prayer for anticipatory bail of the petitioner is rejected.

C.R.M. (A) 585 of 2023 is dismissed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

