

**21.08.2023**  
SL. 3 to 5  
Court No. 29  
Suvayan

**C.R.M. 6826 of 2021**

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Bhawanipore** P.S. case No. **221 of 2021** dated **09.10.2021** under Sections **376D/506(ii)/120B** of the IPC.

And

In the matter of: **Kailash Vijayvargiya**

....petitioner.

**With**

**C.R.M. 6827 of 2021**

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Bhawanipore** P.S. case No. **221 of 2021** dated **09.10.2021** under Sections **376D/506(ii)/120B** of the IPC.

And

In the matter of: **Jisnu Basu**

....petitioner.

**With**

**C.R.M. 6828 of 2021**

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Bhawanipore** P.S. case No. **221 of 2021** dated **09.10.2021** under Sections **376D/506(ii)/120B** of the IPC.

And

In the matter of: **Pradeep Joshi @ NG Joshi**

....petitioner.

Mr. Rajdeep Mazumder  
Mr. Moyukh Mukherjee  
Mr. Debu Chowdhury  
Mr. Pritam Roy  
Mr. Abhijit Singh

...for the petitioners.

Mr. Saswata Gopal Mukherji, PP  
Mr. Rudradipta Nandy, APP  
Mr. Swapan Bannerjee  
Mr. Suman De  
Mr. Tarun Chatterjee

...for the State.

1. Heard learned Counsel for both the parties.
2. As all the three anticipatory bail applications arise out of the same FIR, they are taken up for disposal by this common order with consent by learned Counsel for the parties.
3. Perused the judgment of Hon'ble Supreme Court passed in Criminal Appeal No. 1581 of 2021 where in Paragraph 40 the Hon'ble Supreme Court has passed the following order:

***“40. In view of the above and for the reasons stated above, while affirming the impugned judgment and order passed by the High Court remanding the matter back to the learned Magistrate, we set aside the subsequent order passed by the magistrate on remand, pursuant to the impugned judgment and order passed by the High Court and remit the matter back to the learned Magistrate to examine and apply his judicial mind and then exercise discretion whether or not to issue directions under Section 156(3) or whether he can take cognizance and follow the procedure under Section 202. He can also direct the preliminary enquiry by the police in terms of law laid down by this Court in the case of Lalita Kumari (Supra). Copies of the papers and documents filed before the High Court and this court could also be forwarded and brought on record of the Magistrate, who would thereupon examine and consider the matter. As observed hereinabove, the complainant/informant would be entitled to question the genuineness of the contents of the said documents.”***

4. From the aforesaid facts and in view of the fact that Hon'ble Supreme Court has set aside the order passed by learned Magistrate, no P.S. case now exists against the petitioners in eye of law. In view of the aforequoted order of the Hon'ble Supreme Court, the Magistrate shall now take up the matter and decide as to whether he shall act under Section 156(3) Cr.P.C. and refer the matter to the P.S. or take cognizance of the offence himself by following the procedure under Section 202 Cr.P.C.
5. Though there is no pending P.S. case against the petitioners at present but we are one in our view with the submission of learned Counsel for the petitioners that in view of the pending enquiry substantive apprehension looms large in the minds of the petitioners so far as arrest is concerned, especially in view of the fact that the outcome of the enquiry or exercise of discretion by the learned Magistrate under Section 156 Cr.P.C. cannot be foretold at this juncture.

Mr. Mukherji, learned Public Prosecutor is fair enough to concede the position of law that in view of direction of the Hon'ble Supreme Court in the aforequoted paragraph no P.S. case is pending against the petitioners now and they should not apprehend unnecessarily about arrest in the vacuum.

6. Regard being had to the rival submissions, we dispose of the matters as infructuous in view of non-existence of any P.S. case against the petitioners but direct the appropriate Police authority or the Magistrate that in case of referral of the

complaint under Sections 156(3) Cr.P.C. and institution of fresh P.S. case or cognizance taken by the Magistrate by following the process under Section 200 Cr.P.C., no coercive action shall be taken against the petitioners either by the Police or by the competent Magistrate for a period of four weeks from the date of receipt of notice by them (petitioners) under Section 160 Cr.P.C. issued by the I.O. or summons/bailable warrant issued by the competent Magistrate to enable them (petitioners) to avail appropriate remedy for the sake of their right to liberty (especially since the petitioners were on interim protection throughout till today).

During such interregnum of four weeks, however, they (petitioners) may appear before the I.O. or the competent Magistrate to co-operate in the investigation or the enquiry as the case may be.

7. With the aforesaid observation the applications being CRM 6826 of 2021, CRM 6827 of 2021 and CRM 6828 of 2021 are disposed of.

**(Chitta Ranjan Dash, J.)**

**(Partha Sarathi Sen, J.)**

