

21.09.2023
M/L 212
Ct. No.29
(D/O)
(SKB)

CRM (A) 3820 of 2023

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Murshidabad P. S. Case No.67 dated 25.01.2023 under Sections 326/307/34 of the Indian Penal Code read with Sections 25(1)(a)/27 of the Arms Act adding Sections 302/120B IPC (G.R. Case No.243 of 2023).

In the matter of : Golam Rasul @ Golam Rasul Sk.
@ Md. Golam Rasul

... Petitioner

Mr. Sachit Talukdar

... for the petitioner

Mr. Madhusudan Sur, ld. APP
Mr. Arabinda Manna

... for the State

1. Heard learned advocates for the parties.
2. Admittedly, proclamation was issued, published and executed under Sections 82/83 Cr.P.C. before filing of the present petition for anticipatory bail. Such order was brought in revision before the single Bench of this court.

Hon'ble Single Judge in page 2 of the order has held thus:

“I have considered the submissions particularly the emphasis of the learned advocates with regard to the nature of process being issued by the learned Additional Chief Judicial Magistrate, Lalbagh, Murshidabad. I find that the order, which was passed relating to proclamation and attachment, has already been executed. Once the order has already been executed, at this stage in a case under Section 302 of the Indian penal Code to recall the order in a case where accused in spite of best efforts of the police authorities could not be traced, would simply be encouraging a person who intends to evade the process of law particularly, in a case under Section 302 of the Indian Penal Code.”

3. Having held as above, Hon'ble Single Judge has disposed of the revision with the following observations:

“Having regard to the aforesaid, I am not inclined to interfere with the prayer advanced by the petitioners. However, if the petitioners approach the court for anticipatory bail, it would be for the court, adjudicating the issue of anticipatory bail, to decide in respect of the conduct of the petitioners, the issuance of the proclamation and attachment and in the background of the merits whether the reliefs sought for by the petitioners can be granted. This Court refrains exercising its power under Section 401 read with Section 482 of the Code Criminal Procedure in respect of the prayers so advanced by the petitioners.”

4. We are clear in our mind that having regard to the aforesaid first observation of the Hon’ble Single Judge, we cannot follow the observation made in the concluding paragraph, inasmuch as in a criminal matter, Division Bench is not the appellate forum like intra court appeal under Letters Patent Act. Hon’ble Supreme Court in various decisions have authoritatively held that once proclamation is issued and published, the petition for anticipatory bail is not maintainable.
5. In view of such fact, this petition for anticipatory bail is not maintainable. However, if the petitioner surrenders before the competent court in seisin over the matter within a fortnight from today giving three days’ advance notice to the learned PP/APP attached to the court and file a petition for bail, the same shall be disposed of on merit on the same day taking into consideration the part played by the petitioner in the alleged transaction.
6. If, however, learned ACJM, Lalbag, Murshidabad feels that he lacks jurisdiction, the application for bail, so filed, shall be disposed of in the first hour so that the petitioner

can move before the competent court in the second hour on the same day. On such application being moved, the same shall be disposed of by the court within time on merits not exceeding seven days from the date of such application with advance notice to the learned PP.

7. With the aforesaid observation, the application being CRM(A) 3820 of 2023 is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)