

22.11.2023.
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Ct.No.29
ss/SD

C.R.M. (A) 4423 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Chopra** Police Station Case No. **234** of **2023** dated **30.03.2023** under Sections **326/307/302/34** IPC and Sections 25(1)(a)/27/35 of the Arms Act (corresponding to G.R. Case No. 787 of 2023, pending before the Learned ACJM, Islampur, Uttar Dinajpur).

And

In the matter of: **Nashir Akhtar & ors.**

....petitioners.

Mr. Sekhar Kr. Basu, Sr. Adv.
Mr. Saubhik Mitter
Mr. Antarikhya Basu

...for the petitioners.

Mr. Madhu Sudan Sur, Ld. APP
Mr. Manoranjan Mahata

... for the State.

Mr. Niladri Shekhar Ghosh
Mr. Nazar Chowdhary
Ms. Sompurna Chatterjee
Mr. Saurav Mondal
Ms. Labani Sikder

... for de facto complainant

1. Heard learned Counsel for the parties.
2. The present petition for anticipatory bail filed by eleven accused persons involves a case of double murder and injury to three persons by shot of pellets.
3. From the statement of the victim including injured persons recorded under Section 161 Cr.P.C. and in some cases under Section 164 Cr.P.C., it is found that a meeting was going on and some decisions were taken. The decision of the meeting was not acceptable to a group of participants including the petitioner no.2 (Rashid Akhtar @ Md. Rashid Akhtar). There was verbal

duel and suddenly the petitioner no.2 Rashid Akhtar @ Md. Rashid Akhtar fired pellets on deceased Hashu, who had suffered pellet injury on all over his body and cause of death may be the pellet injury only on his chest.

4. There is a case and counter-case between the parties.
5. From the materials on record we find that in the transactions three persons from the prosecution party were armed with gun with capability to shot pellet. They are (i) Rashid Akhtar @ Md. Rashid Akhar, petitioner no.2 (ii) Pintu and (iii) Gulthu.
6. It is evident from the statements of the witnesses that apart from Rashid Akhtar, petitioner no.2, Pintu and Gulthu (not before us) fired indiscriminately causing death of one Fazlul Rahaman who had also sustained pellet injury on his chest. Other persons including Afjal Alam and Md. Kanuar have also sustained pellet injury on different parts of their bodies, which are not vital parts of the body. So far as the other petitioners except the present petitioner no.2 are concerned, they are alleged to be armed with different weapons.
7. The post-mortem report in respect of the two deceased and the three injured persons are not indicative of any assault by other weapon except the fact that one injured has sustained a cut injury.
8. In the present case, the charge being under Section 34 I.P.C. it is to be found out that there was common

intention on the part of all to cause death of two persons and cause injury to injured persons.

9. At this stage, learned Counsel for the informant produced an order showing that proclamation had already been issued against all the petitioners on 29.5.2023. This petition for anticipatory bail having been filed on 25.9.2023, the present petition as laid is not maintainable in view of judicial dictums.
10. Mr. Basu, learned Senior Counsel appearing for the petitioners being assisted by Mr. Saubhik Mitter and Mr. Antarikhya Basu, submits that against the order of proclamation the present petitioners had moved the learned Single Judge under Section 482 Cr.P.C. in which stay was granted for limited period. The present petition having been filed during currency of the stay order, the present petition as laid is maintainable according to their wisdom, as submitted by Mr. Basu.
11. We are afraid that the contention of Mr. Basu, learned Senior Counsel is not tenable inasmuch as a periodic stay in a matter does not displace altogether the proclamation issued by the competent criminal court, though it inactivate the operation of the same for the time contemporaneous with the currency of the stay order. After expiry of the stay order the process under Section 82 Cr.P.C. gets revived automatically.
12. In view of such position of law, a periodic stay order of a proclamation issued under Section 82 Cr.P.C. does not

make a petition for anticipatory bail filed during the currency of the order of stay make the same maintainable automatically unless the proclamation issued under Sections 82 and 83 Cr.P.C. are quashed or made inoperative. In the present case, however, the Revision filed under Section 482 Cr.P.C. against the proclamation order has been disposed of with clear finding that the Court (Revisional Court) is not inclined to interfere in the matter.

13. In view of the aforesaid discussions, we are constrained to hold that the present petition as laid is not maintainable in view of the judicial dictums. However, we have discussed the entire case on merits.
14. The petitioners, if so advised, may surrender before the competent court (learned Additional Chief Judicial Magistrate, Islampur) within 15 days from today with 7 days' advance notice to the learned P.P. and A.P.P. attached to that court.
15. The bail application if filed by the petitioners shall be taken up on merits by the learned A.C.J.M., Islampur in the first hour of the court and the same be disposed of by passing reasoned order before lunch. The learned P.P./ A.P.P./ Asstt. P.P. on whom the advance notice shall be served is directed to produce the case diary on the same day.
16. In the event the prayer for bail is rejected by the learned Magistrate, the petitioners shall be at liberty to move the

court of learned Additional Sessions Judge, Islampur, District Uttar Dinajpur in the second hour. The bail application so filed shall be disposed of on merit in accordance with law by the learned Additional Sessions Judge within a period of ten days, at best from the date of filing after hearing learned Counsel for both the parties and after perusal of the case diary.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)