

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

29.08.2023
Item no.13
Court No.01
P.P./S.D.

CRM (A) 649 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure;

And

In Re : Abdul Rafik @ Mukul & Anr.

.... Petitioners

Mr. Hillol Saha Podder

....for the petitioners

Mr. Kallol Acharjee

Mr. Sourav Ganguly

..... for the State

Apprehending arrest in connection with Kotowali Police Station Case No. 322 of 2023 dated 5.4.2023 under Sections 364A/323/325/34 of the Indian Penal Code, 1860, the present application has been preferred.

Mr. Saha Podder, learned advocate appearing for the petitioner submits that there was a dispute between the victim and the petitioner no. 1 pertaining to commencement of a business and the petitioners have been vindictively implicated. The allegations are omnibus in nature and no specific overt act has been attributed to the petitioners. Upon completion of investigation chargesheet has also been submitted and as such custodial interrogation of the petitioners may not be necessary and they may be enlarged on anticipatory bail on stringent condition.

Mr. Acharjee, learned advocate appearing for the State opposes the petitioners' prayer and submits that the petitioner no. 1 is the principal accused and he is a member of the CRPF. Drawing our attention to the statement of the victim, as recorded under Section 164 of the Cr.P.C., he submits that specific overt act has been attributed to the petitioner no. 1.

We have heard the learned advocates, considered the materials on record, particularly the statement of the victim as recorded under Section 164 of the Cr.P.C.

Prima facie, we find specific overt act has been attributed to the petitioner no. 1 and as such we are not inclined to exercise discretion in his favour and his prayer for anticipatory bail is refused.

Accordingly, the prayer for anticipatory bail in respect of the petitioner no. 1, **Abdul Rafik @ Mukul** is rejected.

However, no specific allegation has been levelled against the petitioner no. 2 by the victim in his statement under Section 164 of the Cr.P.C. Considering the extent of complicity of the petitioner no. 2, we are of the opinion that his custodial interrogation may not be necessary.

We direct that in the event of arrest, the petitioner no. 2, namely, **Rehanur Islam @ Bapon**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand Only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the arresting officer and subject to

the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973.

It is further directed that the petitioner no. 2 shall not tamper with the evidence or intimidate the witnesses.

Accordingly, the application for anticipatory bail is partly allowed.

CRM (A) 649 of 2023 is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Lapita Banerji, J.)

(Tapabrata Chakraborty, J.)