

14.09.2023

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Calcutta High Court
In the Circuit Bench at Jalpaiguri

CRM (A) 750 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 05.09.2023 in connection with Siliguri Police Station Case No. 668 of 2023 dated 16.08.2023 under Sections 406/420 of the Indian Penal Code.

In the matter of : Vishal Gupta @ Mohata & Anr.

... Petitioners

Ms. Rima Sarkar,
Ms. Sidhi Sethia

...for the Petitioners

Mr. Aditi Shankar Chakraborty,
Mr. Kallol Nag

.....for the State.

1. Learned counsel for the petitioners submits that the petitioners have admitted taking the quantum of money as alleged but have also indicated in writing to the de facto complainant their intention to return the same. Although such intention was expressed in May, 2021 and two years have elapsed in the meantime, it is submitted, the petitioner no. 2 suffered from a miscarriage in the meantime. As such, due to the plight of the petitioners, the money could not be

returned but the petitioners are agreeable to return the same at the earliest.

2. Learned counsel appearing for the State opposes the prayer for anticipatory bail and submits that recovery of money would be next to impossible in the event petitioners are granted anticipatory bail at this stage.

3. Insofar as the allegations are concerned, we find that the petitioners have admitted the quantum of money taken and seek to return the same. The appropriate remedy before the de facto complainant is to file a money suit against the petitioners and not adopting the oblique method of initiating criminal proceedings. That apart, there is doubt as to whether there is intention of cheating amounting to a criminal offence, since the petitioners have admitted having received the amount and have expressed their intention to return the same. That apart, we do not find any necessity for custodial interrogation of the petitioners in the present case.

4. Accordingly, CRM (A) 750 of 2023 is allowed, thereby granting anticipatory bail to the petitioners on condition that the petitioners shall comply with the conditions as stipulated in Section 438(2) of the Code of Criminal Procedure.

5. In the event of arrest, the petitioners shall be released on bail upon furnishing a bond of Rs. 10,000 (Rupees Ten

Thousand) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Siliguri and on further condition that the petitioners shall make themselves available in the event so required for the purpose of investigation and shall meet the Investigating Officer once in a month. The sureties may be common in case of both the petitioners.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)