

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

12.12.2023.
10/tkm

C.R.M. (A) 960 of 2023

In Re : An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Dinhata P.S case no. 263 of 2023 dated 2.6.2023 under sections 302/34 IPC read with sections 25/27 of the Arms Act

and

In Re : Dhiman Barman ... petitioner

Mr. Sudip Guha

Allowed

..... for the petitioner

Mr. A S Chakraborty, Id APP

Mr. Sourav Ganguly

..... for the State

1. Petitioner submits that he is not named in the FIR.

Incident occurred in the course of accidental firing by one Pintu Modak. He is no way involved in the murder. He has been falsely implicated. He prays for anticipatory bail.

2. During hearing of the application we noted that investigating officer had issued a notice under section 41A Cr.P.C upon the petitioner. As the case relates to an offence of murder punishable with life imprisonment we called upon the investigating officer to explain his conduct. Investigating officer is present today with the report.

3. We have considered the materials on record including the report. In the report the investigating officer stated as presence of the petitioner at the place of occurrence had transpired from the statement of one Tukai Nandy, he issued notice under section 41A Cr.P.C. Explanation given by the investigating officer exposes gross ignorance of law

relating to arrest particularly applicability of section 41A Cr.P.C thereto. Section 41A Cr.P.C may be resorted to as an alternative measure to arrest of an accused in appropriate cases involving offences punishable with imprisonment up to seven years. Present case was registered for murder and there was no scope for issuance of notice under section 41A Cr.P.C. Even the report does not give an impression that the investigating officer had treated the petitioner as an accused at the stage when he had issued notice under section 41A Cr.P.C. Hence he ought to have resorted to issuance of notice under section 160 Cr.P.C. to record statement of the petitioner if he considered it necessary to do so for progress of investigation.

4. We record our displeasure with regard to lack of knowledge of the investigating officer regarding applicability of legal provisions in the matter of investigation and arrest. We are conscious that the investigating officer is not an exception in the matter. Other members of the force are equally indifferent to the applicability of law relating to section 41A Cr.P.C. In *Satender Kumar Antil Vs. CBI & Anr.*¹ the Apex Court emphasizes strict and appropriate application of law relating to arrest particularly the

¹ (2022) 10 SCC 51

directions in *Arnesh Kumar Vs. State of Bihar & Anr.*² pertaining to issuance of notice under section 41A Cr.P.C

5. Accordingly, we direct the Superintendent of Police Cooch Behar to undertake legal awareness programme in his district amongst the investigating officers regarding applicability of legal provisions particularly section 41A Cr.P.C in the matter of arrest.

6. Coming to the facts of the case we note that the petitioner is no way involved with the firing which resulted in the death of the victim. One Pintu Modak had fired at the victim resulting in his death. In view of the extent of complicity of the petitioner in the crime we are inclined to grant anticipatory bail to the petitioner.

7. Accordingly, we direct that in the event of arrest, the petitioner shall be released on bail upon furnishing a bond of Rs. 10,000/- with two sureties of like amount each, to the satisfaction of the Arresting Officer and also subject to the conditions as laid down under section 438(2) of the Code of Criminal Procedure, 1973.

8. Petitioner shall appear before the court below and pray for regular bail within four weeks from date.

9. The application being CRM (A) 960 of 2023 is disposed of.

² (2014) 8 SCC 273

10. Copy of this order be sent to the Superintendent of Police, Cooch Behar for taking appropriate step in educating the investigating officers in the matter of investigation and arrest.

(Apurba Sinha Ray, J.)

(Joymalya Bagchi, J.)