

29.07.2024
SL No.5
Court No.29
(gc)
(Rejected)

CRM (A) 2292 of 2024

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure corresponding to Section 482 of BNSS, 2023 filed in connection with National Investigation Agency Case No.RC-04/2024/NIA/DLI dated 16.04.2024 under Sections 364/302/120B/34 of the Indian Penal Code and added Sections 323/325/326/307/354 of the Indian Penal Code, Sections 25/27 of the Arms Act, 1959, Sections 3(1)(r)/3(1)(s)/3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 3/4 of the Explosive Substances Act, 1908 connected to Moyna Police Station Case No.128 of 2023 dated 02/05/2023 under Sections 364/302/120B/34 of the Indian Penal Code, 1860 and added Sections 323/325/326/307/354 of the Indian Penal Code, 1860 corresponding to NIA Case No.1 of 2024.

And

In the matter of : **Swapan Bhowmik & Ors.**

- Petitioners.

Mr. Sabyasachi Banerjee,
Mr. Amitayu Kundu

....For the Petitioners.

Mr. Soumya Nag

....For the De facto Complainant.

Mr. Arun Kumar Maiti (Mohanty),
Mr. Bhaskar Prasad Banerjee,
Mr. D. Tandon

... For the NIA.

Mr. Moyukh Mukherjee,

....For Sanjay Kr. Tanti
(Injured Eye Witness)

1. The learned Counsel for the petitioners submits that the petitioners have been falsely implicated due to political rivalry. A typed complaint has been prepared which is quite unusual, signed by the wife of the victim. The petitioners duly attended the Investigating Officer of NIA but the NIA has not endorsed their presence and in this regard the learned Counsel has relied

upon the decision of the Hon'ble Supreme Court in ***Pankaj Bansal Vs. Union of India & Ors.*** reported at **2023 SCC Online 1244**.

2. The anticipatory bail application is opposed by the learned Counsel appearing on behalf of the NIA, de facto complainant and the injured eye witness.
3. It is further submitted by the learned Counsel for the petitioners that that the notice was issued to the petitioners as witness and not as suspect and there is nothing on record to show that they have not cooperated with the investigation merely because they may not have confessed before the Investigating Officer of any act. It does not mean that they have not cooperated with the investigation as their right of double jeopardy under Article 20(3) of the Constitution of India is required to be protected and cannot be compromised merely on the perception of the Investigating Officer that they are bound to make confessional statement before the Investigating Agency.
4. At this stage, we are required to consider the case diary in order to ascertain whether any incriminating material is available against the petitioners as well as the gravity of the offence. Initially, the charge-sheet was filed without naming the present petitioners although they are all named in the FIR. Suspecting impartiality of the Investigating Agency, a learned Single Judge has transferred the investigation to the NIA on 5th April, 2024 and that order was unsuccessfully challenged by the State. The

Hon'ble Division Bench presided over by the Hon'ble the Chief Justice on 16th May, 2024 has affirmed the order of the learned Single Judge. Thereafter NIA has taken over the investigation.

5. The learned Counsel for the NIA has produced the case diary and the progress of the investigation. It appears that prior to the filing of the first charge-sheet, there are statements of injured and independent witnesses directly implicating the petitioners in the commission of the alleged offence. Surprisingly, their names did not find place in the charge-sheet. However, at this stage we are only required to consider a prima facie case if has been made out against the petitioners and there are materials suggesting the involvement of petitioners in the commission of the alleged offence. It is for the NIA to investigate into the matter. There are specific allegations by the wife of the victim as well as the injured persons and other witnesses who were present at the place of occurrence directly implicating the petitioners for the alleged offence.
6. Under such circumstances, we are not inclined to grant any relief to the petitioners.
7. Accordingly, the application for anticipatory bail is rejected.
8. However, there shall be no order as to costs.
9. However, we must record that the Investigating Officer has not followed the law laid down in ***Pankaj Bansal (supra)*** and must be careful and cautious in future in issuing an appropriate certificate of appearance.

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

(Soumen Sen, J.)

(Uday Kumar, J.)