

29.08.2024
rc/ct.no.34
Item No.48

CRR No. 3495 of 2024

**In the matter of : Shashanka Maiti & Ors.
Vs.
State of West Bengal & Anr.**

Mr. Prabir Kumar Mitra
Mr. Pinak Kumar Mitra
Ms. Pallavi Pain ...for the Petitioners

Mr. Debasish Roy
Mr. Arijit Ganguly
Ms. Sreemoyi Royfor the State

Petitioners have assailed the order passed by the learned Additional Sessions Judge, 1st Court, Jhargram (In-Charge) on July 29, 2024 in Special Case No. 5 of 2021 turning down the prayer of the petitioners and taking them into custody followed by rejection of their prayer for bail.

Learned counsel for the petitioners submits that the petitioners appeared before the learned Trial Court in compliance with the judgment delivered by this Court on July 22, 2024 in CRR No. 1877 of 2024 but the learned Judge took them into custody and refused to release them on bail despite the fact that this Court, in the earlier judgment, recorded that the petitioners have not been charged with offence under Section 409 of the Indian Penal Code in the charge sheet and investigating officer did not consider it necessary to arrest the petitioners dealing with the investigation.

The earlier order also refers to the authority in **Tarsem Lal** Vs. **Directorate of Enforcement, Jalandhar Zonal Office** in Criminal Appeal No. 2608 of 2024 wherein the Hon'ble Supreme Court has held that when an accused is not arrested during investigation and appears before the Court pursuant to summons, the Court can always take recourse to Section 88 of the Code of Criminal Procedure.

Per contra, learned counsel for State has submitted that the order impugned is a reasoned order and rejection of anticipatory bail of the co-accused weighed with the court in rejecting the prayer of the petitioners.

By the earlier order, this Court directed the petitioners to appear before the learned Trial Court within 10 days from date and take necessary steps in accordance with law.

Upon appearance of the petitioners before the learned Trial Court, they were taken into custody and their bail prayer was turned down.

Even at the cost of reiteration, this Court observes that in view of the law laid down in the authority in Tarsem Lal (Supra), the learned Trial Court was at liberty to take recourse to Section 88 of the Code upon appearance of the petitioners before him and in no case could the learned Trial Court remand the petitioners to custody and refuse to release them on bail.

In view of the above, this Court is inclined to hold that the petitioners shall file an application praying for bail before the learned Trial Court and the learned Trial Court shall consider the

same and release the petitioners on bail forthwith subject to such conditions as the learned Trial Court may deem fit and proper.

With the said observations and directions the revisional application being CRR No. 3495 of 2024 is disposed of.

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

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh,J)