

19.11.2024
Sl. Nos.5 to 8
akd

C. R. M. (A) 3911 of 2024
+
C. R. M. (A) 3881 of 2024 [Ref. File]

In Re: An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed on 06.11.2024 in connection with Manikchak Police Station Case No.406 of 2024 dated 09.06.2024 under Sections 341/325/326/302/307/34/120B of the Indian Penal Code. (G.R. Case No.3841 of 2024)

And

In Re: **Martuj Ali & Anr.**
... .. Petitioners

W I T H

C. R. M. (A) 3915 of 2024
+
C. R. M. (A) 3882 of 2024 [Ref. File]

In Re: An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed on 30.09.2024 in connection with Manikchak Police Station Case No.406 of 2024 dated 09.06.2024 under Sections 341/325/326/302/307/120B of the Indian Penal Code. (G.R. Case No.3841 of 2024)

And

In Re: **Md. Faruk @ Faruk Sk. & Ors.**
... .. Petitioners

Mr. A. H. Molla
Ms. Riya Das
... for the petitioners [in CRM (A) 3911/2024]

Mr. Arnab Chatterjee
Mr. Sumit Kumar Jha
Mr. Dipankar Guha
... for the petitioners [in CRM (A) 3915/2024]

Mr. Debasis Roy .. Id. Public Prosecutor
Ms. Faria Hossain .. Id. Addl. Public Prosecutor
Mr. Rajes Jana
... .. for the State [in CRM (A) 3911/2024]

Mr. Debasis Roy .. Id. Public Prosecutor
Mr. Iqbal Kabir
Ms. Ayana Dey
... .. for the State [in CRM (A) 3915/2024]

1. On parity with Estab Ali and Seikh Israil @ Israil, one Sintu Sk. @ Sentu Sk. was granted anticipatory bail in CRM (A) 3610 of 2024. Following the said order, Hibjur Rahaman has been granted pre-arrest bail in CRM (A) 3882 of 2024 and Barkat Ali, Md. Ashiruddin Sk. and Nuhu Sk. have been granted pre-arrest bail in CRM (A) 3881 of 2024.
2. Presently, learned Advocate for the petitioners relies on those orders and seeks anticipatory bail on parity.
3. It is trite grant of bail on parity is not a mechanical exercise. When offence is committed by a number of accused, role of each accused, weapons used, evidence collected against him and other attending circumstances must be examined prior to extending relief on parity¹.
4. Perusing the orders granting anticipatory bail to Sintu Sk. @ Sentu Sk., Hibjur Rahaman, Barkat Ali, Md. Ashiruddin Sk. and Nuhu Sk., we note the sole reason ascribed is parity with Estab Ali and Seikh Israil @ Israil.
5. Learned Public Prosecutor brings to our notice neither Estab Ali nor Seikh Israil @ Israil were mentioned as assailants by the deceased in his oral dying declaration before Tofijul Sk., Kabil Sk. or Sk. Akhtar. Injured eyewitness viz. Ronikul Islam has also not named them as one of the persons present in the mob which assaulted the deceased.
6. These overwhelming materials were ignored and relief was extended to the aforesaid accused merely on parity with Estab Ali and Seikh Israil @ Israil. When orders are passed on principles of parity ignoring relevant and cogent materials distinguishing role of petitioning accused from another who had been granted relief, the said order suffers from patent perversity and is rendered *void*.

¹ Mahadev Meena vs. Praveen Rathore & Ors., (2021) 17 SCC 788

7. In such view of the matter, we issue Rule calling upon the co-accused Sintu Sk. @ Sentu Sk., Hibjur Rahaman, Barkat Ali, Md. Ashiruddin Sk. and Nuhu Sk. to show cause as to why the orders granting anticipatory bail to them on the perverse finding that they stand on the same footing with Estab Ali and Seikh Israil @ Israil shall not be set aside/cancelled.

8. Department is directed to serve the Rule upon the aforesaid incumbents within two weeks from date.

9. The Rule is made returnable on **03.12.2024**.

Re : C. R. M. (A) 3911 of 2024

10. With regard to the role of petitioners in CRM (A) 3911 of 2024, we note petitioner no.1 is stated as one of the assailants in the oral dying declaration. Hence, we do not wish to grant anticipatory bail to petitioner no.1.

11. The prayer for anticipatory bail of petitioner no.1 namely, **(1) Martuj Ali** is rejected.

12. However, petitioner no.2 is neither named in the oral dying declaration nor by the injured eyewitness. Hence, he may be extended the same relief as Estab Ali and Seikh Israil @ Israil.

13. Accordingly, we direct in the event of arrest, petitioner no.2, namely **Ainul Hoque**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), 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 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and on further condition that the petitioner shall appear before the jurisdictional court and pray for regular bail within four weeks from date.

14. CRM (A) 3911 of 2024 is thus, disposed of.

Re : C. R. M. (A) 3915 of 2024

15. With regard to the role of petitioners in CRM (A) 3915 of 2024, we note petitioner no.1 is named by the injured eyewitness as a member of the group who assaulted the deceased. In view of the aforesaid incriminating materials on record, he does not stand on the same footing with Estab Ali and Seikh Israil @ Israil.

16. Accordingly, prayer for anticipatory bail of petitioner no.1 namely, **(1) Md. Faruk @ Faruk Sk.** is rejected.

17. Petitioner no.2 is named in the oral dying declaration. In light of this incriminating material, he cannot be treated on parity with Estab Ali and Seikh Israil @ Israil.

18. Hence, prayer for anticipatory bail of petitioner no.2 namely, **(2) MD Seraj** is rejected.

19. Petitioner no.3 is also named in the dying declaration as per the statement of Osman Sk. recorded under Section 164 of the Code of Criminal Procedure.

20. Accordingly, prayer for anticipatory bail of petitioner no.3 namely, **(3) Najrul @ Najju** is rejected.

21. Petitioner no.4 is also named in the oral dying declaration as per Kabil Sk. and Sk. Akhtar.

22. Hence, prayer for anticipatory bail of petitioner no.4 namely, **Saruwar Jahan** is rejected.

23. CRM (A) 3915 of 2024 is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

