

17.12.2024
06
Ct. No. 28
SG
[OP]

C. R. M. (A) 4239 of 2024

In Re: An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with English Bazar Police Station Case No. 145 of 2024 dated 30.01.2024 under Sections 447/323/386/427/506/34 of the Indian Penal Code (G.R. Case No. 578 of 2024).

And

In Re: **Kausar Sk @ Kousar Sk and Ors.**

... .. Petitioners

Mr. Phiroz Edulji,
Mr. Sagar Saha

... .. for the petitioners

Mr. Debasish Roy,
Mr. Saryati Dutta,
Ms. Debadrita Mondal.

... .. for the State

Mr. Pravas Bhattacharya.

..... for the de facto complainant

1. Petitioners have renewed their prayer for pre-arrest bail. Mr. Edulji, learned Senior Advocate contends there is a significant change in circumstances since the rejection of pre-arrest bail. After the rejection of prayer for pre-arrest bail of the petitioner, another accused has been granted similar relief. A complaint was made to the Waqf Tribunal alleging *de facto* complainant and his associates had encroached on wakf land. Waqf Tribunal directed maintenance of status quo on the said land. These subsequent events changed the profile of the case so far as the petitioners are concerned. Accordingly, they may be granted anticipatory bail.

2. Learned Advocate for the State opposes the prayer for anticipatory bail. He submits co-accused Bulbul does not stand

on the same footing with the petitioners. He further submits after the rejection of anticipatory bail, petitioners had absconded and prayer has been made for issuance of proclamation. Waqf Tribunal has not come to a final opinion with regard to the status of the land. On the other hand, statement of witnesses show petitioners had extorted money from the *de facto* complainant. Learned Advocate for the *de facto* complainant also opposes the prayer for anticipatory bail.

3. We have considered the rival submissions of the parties. A co-ordinate Bench of this Court had turned down the initial prayer for anticipatory bail in February, 2024, inter alia, holding petitioners were involved in extorting money from *de facto* complainant. In August, 2024 subsequent prayer for pre-arrest bail was also turned down. Thereafter, the Waqf Tribunal has passed an order directing maintenance of status quo with regard to the property in question. On the prima facie view the land belongs to a waqf and the *de facto* complainant cannot claim right, title or interest therein. These circumstances were not prevailing at the time when the earlier prayers for anticipatory bail were considered. Allegation of extortion requires to be assessed in light of the fact that the title of the petitioners to the land is in doubt and an order of status quo has been passed by the Waqf Tribunal on the said land. It is possible that the petitioners had resisted illegal encroachment on waqf property and had been falsely implicated.

4. In such view of the matter, we give liberty to the petitioners to appear before the jurisdictional Magistrate within seven days from date and pray for regular bail.

5. In the event such prayer is made, the said court shall deal with the same taking into consideration the subsequent developments which cast doubt on the legal right of the *de facto* complainant to set boundaries on the land in question and without being influenced by the earlier rejections of the pre-arrest bail orders.

6. In the event the petitioners fail to appear before the jurisdictional court within the stipulated time, it shall be open to the court to issue appropriate measures including proclamation as per law.

7. The application for anticipatory bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)