

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

05.01.2024
JPD 14
Sws.M
ct.1

C.R.M. (A) 5 of 2024

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973.

Allowed

In the matter of : **Sanjay Sarkar @ Sanju Sarkar**
..... Petitioner

Mr. Sandip Mandal
Mr. Somnath Saha
Mr. Abhilash Mittal

...for the Petitioner

Mr. Nilay Chakraborty
Ms. Namrata Das

...for the State

Heard Mr. Sandip Mandal, learned counsel for the petitioner and Ms. Namrata Das, learned State Advocate for the opposite party.

Apprehending arrest, the petitioner has filed the present petition under Section 438 Cr.P.C. in connection with Bhaktinagar Police Station Case No. 1045 of 2023 dated 25.11.2023 corresponding to G.R. Case No. 6116 of 2023 under Sections 406/420/448/323/325/506 & 34 of Indian Penal Code.

Learned counsel for the petitioner submits that the afore-noted FIR lodged by the defacto complainant, Dilip Kumar Das is based totally on false allegation and is glaring example of connivance of the defacto complainant and the local police.

He submits that the petitioner has first given an information dated 22.11.2023 to the Commissioner of Police, Siliguri Police Commissionerate, Mallaguri, District – Darjeeling, which was duly received in the office of the Commissioner of Police on 22.11.2023 in which the petitioner has clearly stated about the highhandedness and illegal role being played by the police and after 3 days of the aforesaid application of the petitioner, the Inspector-in-charge of the police station in question registered the afore-noted FIR No. 1045 of 2023 on 25.11.2023. He submits that at the best the allegations in the aforesaid FIR merely discloses a civil dispute which has been attempted to be converted into a criminal case by the defacto complainant in connivance with the local police.

Learned State advocate submits that on bare perusal of the afore-noted FIR lodged by the defacto complainant, commission of offence has been made. Therefore, the petitioner is not entitled for anticipatory bail.

We have carefully considered the submissions of learned counsels for the parties and also perused the present petition.

We prima facie find that the petitioner has moved an application dated 22.11.2023 before the Commissioner of Police, Siliguri Police Commissionerate, Mallaguri, District – Darjeeling on 22.11.2023 which was received in the office of the Commissioner of Police on the same day and perusal

thereof shows that there is allegation of threat extended by the local police to the petitioner so as to recover some amount from him at the instance of the defacto informant, Dilip Kumar Das and on refusal, the FIR in question was registered against the petitioner on 25.11.2023 to harass him. Perusal of the FIR in question prima facie reveals some agreement for sale of land entered between the petitioner and the defacto complainant but the land was not provided. If that be so, the legal course open to the defacto complainant was to file a suit for specific performance or to take such action under civil law as may be available to him but instead, prima facie, to harass or exert pressure, the FIR in question has been lodged.

Considering the facts and circumstances of the case, the nature and gravity of acquisition, the application of the petitioner dated 22.11.2023, we find it a fit case to accept the prayer for anticipatory bail of the petitioner. Accordingly, the anticipatory bail is granted to the accused petitioner, namely, **Sanjay Sarkar @ Sanju Sarkar** subject to the following conditions: -

- (i) 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, one of whom must be local, to the satisfaction of the Chief Judicial Magistrate, Jalpaiguri and shall abide by the conditions laid

down in Section 438(2) of the Code of Criminal Procedure until further orders.

- (ii) In the event the petitioner fails to adhere to any of the conditions stipulated in Section 438(2) of the Code of Criminal Procedure, the learned Court below will be at liberty to cancel the anticipatory bail without further reference to this Court.

The application for anticipatory bail being **CRM (A) 5 of 2024** is, thus, **allowed**.

It is made clear that investigation of the trial shall not be influenced by any of the observations made in the body of the order.

Urgent certified copy of this order, if applied for, be supplied to the learned counsel for the respective parties.

(Rai Chattopadhyay, J.)

(Surya Prakash Kesarwani, J.)