

25.01.2024
(D/L 9)
Ct. No.1
(Allowed)
(SKB)

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

C.R.M.(A) 977 of 2023

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Dinhata P. S. Case No.322 of 2018 dated 14.08.2018 under Sections 341/326/307/506/120B of the Indian Penal Code (G.R. Case No. 307 of 2018).

In the matter of : Nisith Pramanik

... Petitioner

Mr. P. S. Patwalia, Sr. Adv.,
Mr. Sudipto Mazumder, Sr. Adv.,
Mr. Rajdeep Mazumder,
Mr. Sourav Chatterjee,
Miss Bansari Swaraj,
Mr. Siddish Kotwal,
Mr. Avrojoyti Das,
Mr. Moyukh Mukherjee,
Mr. Sayak Chakraborty,
Mr. Sudip Kr. Paul,
Miss Riya Agarwal,
Mr. Rajdeep Das

... for the petitioner

Mr. Aditi Shankar Chakraborty, Id. APP,
Mr. Kallol Acharjee,
Mr. Aniruddha Biswas

... for the State

1. The supplementary affidavit filed on behalf of the petitioner today in Court is taken on record.
2. Heard learned Counsel for the parties.
3. It is submitted on behalf of the petitioner that the occurrence happened on 14.08.2018 and charge-sheet dated 31.10.2022 was received in the Court of the jurisdictional Magistrate on 05.03.2023. On the same day the Magistrate issued warrant of arrest against the

petitioner in a routine manner on the prayer of the Investigating Officer. It is further submitted that after filing of charge-sheet, no step was taken to apprehend or arrest the present petitioner despite issuance of warrant of arrest. In course of investigation also the present petitioner was never summoned/noticed under Section 160 Cr.P.C. at any point of time though the petitioner was very much available in the State, he being a political figure and also had contested the Lok Sabha Election of 2019 and won. During investigation, the petitioner moved this court under Section 438 Cr.P.C. in 2018 and 2019 twice but in vain.

4. The supervening circumstance according to learned Senior Counsel appearing for the petitioner is that in spite of alleged involvement of the petitioner in the alleged crime, no step was taken by the police either during investigation or till about one year after filing of charge-sheet, and now the petitioner apprehends that State is taking steps to declare the petitioner a proclaimed offender under Section 82 and 83 Cr.P.C. though he has had never absconded and has been very much active in public life in the State being a Union Minister. The Action of the State now, as apprehended by the petitioner is nothing but a game of political vendetta.
5. In earlier anticipatory bail applications filed by the present petitioner, the role of the present petitioner in the

alleged offence has not at all been considered and his prayers in both the occasions have been rejected on the ground of past record of criminal antecedents and such a fact itself is a supervening circumstance. It is further submitted by learned Senior Counsel for the petitioner that the existence of past criminal antecedent against the petitioner comes within Part-I of Section 438(1)(II) Cr.P.C. and existence of past criminal antecedent does not in any way bar relief under Section 438 Cr.P.C. and the same cannot be the sole ground to reject the prayer for anticipatory bail without any discussion regarding existence of a *prima facie* case against the petitioner in the present case.

6. Learned counsel for the State, on the other hand, submits that on two earlier occasions, the prayer for anticipatory bail moved by the petitioner have already been rejected. The present petition is to be considered only if supervening circumstance exists. It is further submitted by learned counsel for the State that there is material to show that the petitioner is directly involved in the offence alleged. Further it is submitted that the present petition for anticipatory bail is not maintainable in view of the judicial dictums as proclamation under Section 82 Cr.P.C. has already been issued.
7. On perusal of the case diary and statement of the injured witnesses, it is found that one Abdul Ali Azad is the

person who had fired the bullet on the injured persons and the two injured persons have not named the present petitioner to be the assailant.

8. Learned counsel for the State draws our attention to the statement of Atikul Hoque at page 212 of the case diary to show implication of the present petitioner in the offence alleged. In the entire statement, we do not find implication of the present petitioner except one line at the bottom of the said statement to the effect that the entire occurrence happened at the instruction of the present petitioner as uttered by the assailants. Admittedly the present petitioner was not present at the spot. There are omnibus statements of other witnesses like Atikul Haque to the effect that they heard the assailants' uttering that they are committing the assault on the instructions of the present petitioner. The petitioner, therefore, can be implicated in the alleged offence by aid of Section 120B I.P.C. The materials on record, however, *prima facie* deficient to attract offence under Section 120B I.P.C. in our considered view. Our Opinion on the basis of materials placed before us is however tentative.
9. From the materials placed before us, we find that there is some materials to remotely connect the petitioner with the alleged crime and those materials are also shaky and at the fringe. But there is no cogent evidence regarding involvement of the petitioner in the offence alleged.

10. From the aforesaid discussion we are of the view that on earlier two occasions Hon'ble Co-ordinate Benches were not assisted properly so far as marshalling of fact is concerned. It is well settled in law that even though there is no absolute embargo in filing successive applications for pre-arrest bail, it can be entertained only if there is a substantial change in the facts and circumstances of the case, which requires the earlier view be interfered with or where, the earlier finding has become obsolete [See **Gurbaksh Singh Sibbia Vs. State of Punjab (1980) 2 SCC 565**].

11. In the present case, both the earlier applications for pre-arrest bail were rejected during investigation. Despite rejection of the prayer of the petitioners on earlier two occasions to the knowledge of the State Counsel, no step was taken during investigation to arrest the petitioner or to notice him for interrogation. Thereafter charge-sheet was filed in the Court of the jurisdictional Magistrate on 05.03.2023 and on the same day warrant of arrest was issued by the said Magistrate routinely on the prayer of the I.O. The grounds on which earlier orders were passed by the co-ordinate Benches have become obsolete by passage of time on the grounds that : (i) Absence of due diligence on the part of the investigating agency created scope for the petitioner to remain at large which cannot be termed as abscondance at all as there is nothing on

record to show that he (the petitioner) had made himself scarce rather he is stated to be present and busy in different political activities in the State. (ii) There is no scope of custodial interrogation of the petitioner at this stage in view of the stage of the proceeding. (iii) The petitioner's arrest now shall be an action of arrest for the sake of arrest only and no useful or legal purpose shall be served by his arrest.

12. The apprehension of the petitioner regarding issuance of proclamation against him under Section 82 and 83 Cr.P.C. just to see him behind the bar after so many years of inaction by the police, on the other hand, is a supervening circumstance warranting reconsideration of the prayer of pre-arrest bail and to interfere with the earlier orders of rejection.

13. So far as existence of record of past criminal antecedent is concerned, that is only a cautionary measure for the courts to exercise discretion under Section 438 Cr.P.C. with circumspection and care but existence of past criminal antecedent itself does not create any bar in granting liberty under Section 438 Cr.P.C. In the present case, 11 cases are stated to be pending against the petitioner and in all the said cases he is stated to be on bail or anticipatory bail. So far as the instant case is concerned, no *prima facie* case under Section 120B I.P.C. is also made out against the

petitioner. We, therefore, are inclined to hold that existence of record of past criminal antecedent against the petitioner is not a ground to reject the prayer in this petition. Had it been the case that in the present case *prima facie* involvement of the petitioner was made out, the record of past criminal antecedent would have been taken as an additional ground to reject this petition without going further deep into the matter.

14. The objective of Section 438 Cr.P.C. is to protect the dignity of a person living in the society by protecting him from unnecessary incarceration and for that matter, the court is to see whether his arrest is a necessity at all in the facts and circumstances of the case. As found from the submissions advanced at the Bar, the petitioner is a man of status now, though we are not sure of such status tomorrow and we do not find justification for custodial interrogation of the petitioner after about six years of the occurrence. Arrest becomes a necessity if custodial interrogation felt absolutely necessary in a case. Otherwise, also Section 438 Cr.P.C. is to be read in the light of Article 21 of the Constitution of India so far as liberty of a person is concerned.

15. In view of such fact, we reiterate that existence of past criminal antecedent alone when materials collected during investigation is *prima facie* deficient to incriminate

the petitioner in the present occurrence should not disentitle him from grant of pre-arrest bail.

16. Coming to the most important objection by the learned counsel for the State, we find that the proclamation under Sections 82 and 83 Cr.P.C. was issued by the court on 18.01.2024 whereas the present petition had been filed on 6.12.2023.

17. We have already held in the case of **Md. Salauddin Siddiqui & Anr. Vs. State of West Bengal [CRA (DB) 211 of 2023]**, disposed of on 01.08.2023 after taking into consideration the decision of Hon'ble Supreme Court in the case of **Lavesh Kumar and Shankar Prasad Vs. State of Bihar (2021 SCC Online SC 955)** that if the anticipatory bail is filed prior to issuance of proclamation under Sections 82 and 83 Cr.P.C. then the bar created by the judicial dictums in the aforesaid cases, is not applicable, though the aforesaid decisions shall apply in full force if petition for anticipatory bail has been filed after issuance of proclamation.

18. We do not find any justification to depart from the aforesaid view taken by us in the aforesaid case of **Md. Salauddin Siddiqui**.

19. Taking into consideration the past conduct of the petitioner and his present status, we do not find any flight risk and there is also no scope on the part of the

petitioner to tamper with the evidence as charge-sheet has been filed in the meantime.

20. Regard being had to such facts and submissions, factum of permanent residence of the petitioner, nature of allegation, nature of evidence, present status of the petitioner and completion of investigation, it is directed that the petitioner shall surrender (virtually or physically) before the learned ACJM, Dinhata, Cooch Behar in G.R. Case No.307 of 2018 within 15 days from today.
21. On his appearance/surrender (virtual or physical) and application for bail, the petitioner shall be released on bail on such terms and conditions as deemed just and proper in the facts and circumstances of the case.
22. We have allowed virtual surrender/appearance of the petitioner in the case to avoid unnecessary unrest in the Court premises owing to political nature of the case.
23. Learned ACJM, Dinhata, Cooch Behar is directed to act upon the server copy of this order, if required.
24. Accordingly, the prayer for the anticipatory bail is allowed.
25. The applications being CRM(A) 977 of 2023 is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)