

04.01.2024
SL No.15
Court No.1
(Srimanta)
(Dismissed)

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRM (A) 1021 of 2023

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed in connection with Kumargram Police Station Case No.03 of 2021, dated 06.01.2021 under Sections 342, 325, 306 and 34 of the Indian Penal Code, 1860 corresponding to GR Case No. 40 of 2021 pending before the Learned Additional Chief Judicial Magistrate, Alipurduar.

And

In the matter of : **Nayan Talukdar**

- Petitioner.

Mr. Pritam Roy,
Ms. Sunayna Prasad,
... For the Petitioner.

Mr. Aditi Shankar Chakraborty,
Mr. Kallol Nag
... For the State.

Heard Mr. Pritam Roy, learned Counsel for the petitioner and
Mr. Aditi Shankar Chakraborty, learned Counsel for the State.

This is the third anticipatory bail petition filed by the petitioner. The first anticipatory bail petition under Section 438 of the Code of Criminal Procedure, 1973 being **CRM/428/2021** (Sri Nayan Talukdar -Vs.- State) **was dismissed by a Coordinate Bench of this Court by order dated 27.09.2021, as under:-**

“On the prayer of Mr. Pal, learned advocate appearing for the petitioner, the application, being CRM 428 of 2021 is dismissed as ‘not pressed’.

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

The petitioner filed second anticipatory bail application being CRM(A)/856/2023 (Nayan Talukdar – Vs. State) under Section 438 of the Code of Criminal Procedure which was dismissed for non-prosecution by order dated 10.10.2023 passed by a Coordinate Bench. Now, the petitioner has filed this third anticipatory bail application under Section 438 of the Code of Criminal Procedure.

Section 438 of the Code of Criminal Procedure reads as follows:-

438. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section;

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1)".

The provision of Section 438 of the Code of Criminal Procedure enables any person who has reason to believe that he may be arrested on accusation of having committed any non-bailable offence, may apply to the High Court or the Court of Session for a direction that in the event of such arrest he shall be released on bail and that Court may after taking to consideration the factors as mentioned in sub-section (1) of Section 438 of the Code of Criminal Procedure either reject the application or issue

an interim order/or order for the grant of anticipatory bail. The application earlier filed by the petitioner was dismissed as not pressed without liberty to file a fresh application. Thus on petitioner's request the petition was dismissed as not pressed. Since CRM/428/2021 filed by the present petitioner was dismissed by order dated 27.09.2021 as reproduced above, therefore, we do not find any good reason to entertain the present petition.

For all the reasons aforestated the petition is dismissed.

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

(Surya Prakash Kesarwani, J.)

(Ray Chattopadhyay, J.)