

10.02.2025
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dismissed

C.R.M. (A) No. 362 of 2025

In Re:- An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita in connection with Hariharpara Police Station Case No. 306 of 2024 dated 22.05.2024 under Sections 376(3)/448/506/376(2)(f)(n) of the Indian Penal Code and Section 6 of the POCSO Act.

And

In Re : Innas Biswas @ Innas Sk. petitioner

Mr. Arabinda Chatterjee, Sr. Adv.

Mr. Subir Ganguly

Mr. Pradyat Saha

.....for the petitioner

Mr. Sanjoy Bardhan

Md. Kutubuddin

..... for the State

Mr. Rameshwar Sinha

..... for the de facto complainant

1. It is alleged petitioner has sexually abused his 13 year old step daughter.

2. Learned senior Counsel for the petitioner strenuously argues the allegations are *mala fide* and concocted.

3. Learned Counsel for the State and *de facto* complainant contend the application is barred under Section 438(4) of the Code of Criminal Procedure (Section 482A of the BNSS). In ***Shajan Skaria vs. State of Kerala***¹ while interpreting similar bar under Section 18/18A of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act,

¹ 2024 SCC Online SC 2249

1989 the Hon'ble Apex Court held it is the duty of the Court to examine the allegations in the FIR and materials collected during investigation to come to a satisfaction with regard to applicability of the statutory bar in entertaining an anticipatory bail application. However, the Court cannot go into the issue of *mala fides*. The aforesaid interpretation would apply to the bar under Section 438(4) of the Code of Criminal Procedure (Section 482(4) of the BNSS). Applying the ratio to the facts of the case we are satisfied that the uncontroverted allegations in the FIR disclose ingredients of offence punishable under Section 376(3) of the Indian Penal Code. Issue of *mala fides* as argued by the learned senior Counsel cannot be gone into in the present application.

4. Hence, application is dismissed as not maintainable.

5. It is open to the petitioner to agitate his grievances in an appropriate proceeding in accordance with law, if so advised.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)