

CRR 1639 of 2025

In the matter of: Anjali Mukherjee & anr.

....Petitioners.

Mr. Uday Sankar Chattopadhyay

Ms. Rajashree Tah

Ms. Trisha Rakshit

Ms. Aishwarya Datta

Ms. Bidisha Chakraborty

....for the petitioners

Mr. Ashok Das

....for the State

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are the accused in a instant case. On 15.02.2025 the learned Sessions Judge, Purba Bardhaman was pleased to grant interim anticipatory bail to the petitioners, *inter alia*, on the condition that the petitioners would make payment of money in question in the meantime. This condition cannot be imposed on the accused. A criminal proceeding cannot be instituted for recovery of money. Therefore, the order of grant of anticipatory bail will be sustained without the said condition to make payment of money. Reliance is placed on the decision of the Hon'ble Apex Court in this regard in *Mursaleen Tyagi Vs. The State of Uttar Pradesh & Anr.* reported at 2023 Live Law (SC) 700, *Udho Thakur & Anr. Vs. State of Jharkhand & Anr.* reported at (2023) 15 Supreme Court Cases 822 and *Sumit Mehta Vs. State (NCT of Delhi)* reported at (2013) 15 SCC 570.

Learned counsel appearing on behalf of the State opposes the prayer. The Hon'ble Apex Court has been consistent in holding that grant of bail should not be made subject to onerous conditions. Only in exceptional circumstances, a particular condition can be imposed as would be absolutely essential.

In the instant case, the petitioners did not undertake or offer to make any payment. In fact, payment of money allegedly defalcated, if made without prejudice, may even amount to an acceptance of guilt.

Criminal proceedings cannot be a surrogate for recovery proceedings.

From a perusal of the order granting anticipatory bail, it would appear that the merits of the case were also considered and only thereafter, the order was passed granting anticipatory bail.

Therefore, the condition to make payment was an additional appendage which was added without specifying any particular reason for the same.

In view of the above, the order granting interim anticipatory bail need not be interfered with, except to the extent that the condition to make payment is set aside. The impugned order is accordingly modified.

In the changed circumstances, let the petitioners surrender before the learned trial court within three week from this date and pray for bail.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)