

12.08.2025
Court No.28
Item No. 22

CRM (A) 1973 of 2025

In Re: - An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

And

In the matter of: **Tamal Das.**

....Applicant/Petitioner.

Mr. Milon Mukherjee, Sr. Adv.,
Mr. Mrityunjoy Chatterjee,
Mr. Manas Das,
Ms. Suchismita Chakraborty,
Mr. Achinto Mondal,
Mr. Arindam Paoli,
Mr. Arko Roy,

...for the petitioner

Ms. Rituparna De Ghosh,
Ms. Debolina Das

...for the State

This is an application for anticipatory bail filed in connection with G.R. Case No. 1947 of 2025 arising out of Berhampore Police Station Case No. 666 of 2025 dated 03.04.2025 under Sections 336(2)/336(3)/340(2)/351(2)/61(2) of the BNS, 2023.

Learned senior counsel appearing on behalf of the petitioner submits as follows. The petitioner is renewing his prayer for anticipatory bail, lastly rejected on 22.04.2025. The petitioner's prayer for anticipatory bail was dismissed as not pressed in CRM (A) No. 1301 of 2025. As the application for anticipatory bail was not decided on merits, a second application would always lie. On this, reliance is placed on a decision of the Hon'ble Apex Court in Rani Dudeja vs. State of Haryana, (2017) 13 SCC 555. Subsequently, the petitioner moved another application for anticipatory bail before the learned

Sessions Judge, Murshidabad in Criminal Miscellaneous Case No. 2214 of 2025 and the same was rejected by an order dated 05.06.2025. The petitioner, aged about 50 years is an Inspector of Police (presently under suspension) attached with West Bengal Police. The only allegation against the petitioner in the FIR is that on 03.04.2025, the petitioner visited the Reserve Office at Berhampore and enquired about an order allegedly issued by the Additional Director General of Police (Law and Order), West Bengal concerning his release from suspension and taking advantage of the informant's lack of knowledge regarding the release from suspension and posting as inspector, the petitioner showed a whatsapp message on his mobile phone and then sent it to the informant. He allegedly threatened the informant demanding his immediate release. Following the enquiry, it was allegedly found that the document was forged. The petitioner is not at all responsible for alleged forging of the said documents.

Learned counsel appearing on behalf of the State denies the allegations. She submits that in *Sudip Sen vs. The State of West Bengal*, reported at 2010 SCC Online Cal 2147, a Full Bench of this Court had categorically decided, among other things, that second application for anticipatory bail would be maintainable before this Court only upon material change in circumstances. In the present case, there is no material change in circumstance. Reliance is also placed on a decision of the Hon'ble Madhya Pradesh High Court in *Imratlal Vishwakarma vs. State of Madhya Pradesh*, reported at 1996 M.P.L.J. 662. The decision in *Rani Dudeja (supra)* does not at all lay down that a second application for anticipatory bail would be maintainable even without the any material change in circumstance.

On merits, the allegations are very serious and there are incriminating materials available in the case diary making out a clinching against the present petitioner.

It is a settled position of law that a second application for anticipatory bail is maintainable before this Court only if there is a substantial change in circumstance. Reliance is placed on Sudip Sen (*supra*).

It is not a rare occurrence that after arguments are advanced in an application for anticipatory bail if it becomes apparent to the petitioners that the Court might not grant such prayer, the petitioners often make a prayer for withdrawing the application. In such cases, the details or the merits of the case are not recorded. Therefore, it is not possible to recollect, that too after a passage of time, or even conjecture as to whether the application was simply not pressed without going into the merits or withdrawn after going into the merits. Therefore, a surer test is to insist upon whether a liberty was granted to move an application afresh or not.

Withdrawing an application or not pressing an application, for all practical purposes, would tantamount to a decision on merits, unless a specific liberty is granted to move an application afresh, especially in a case of anticipatory bail where a second application is not maintainable without any material change in circumstance. Therefore, the test is whether such liberty was granted or not.

In Rani Dudeja (*supra*), the Hon'ble Supreme Court, *inter alia*, held as under:

“.....
3. *We are afraid, the stand taken by the High Court cannot be appreciated. The petition was for*

*anticipatory bail and the one which had been filed earlier might have been withdrawn in a given situation, without inviting the Court to consider the same on merits. On change of circumstances, when another application under Section 438 Cr.P.C. was filed, the High Court should have considered the same on merits. The principle of res judicata could not have operated in an application for bail.
.....”*

Therefore, from a careful reading of the decision, it would be evident that even if an application for anticipatory bail is withdrawn in a given situation without inviting the Court to consider the same on merits, a subsequent application ought to be considered only on “change of circumstances”.

In the instant case, there is no substantial or material change in circumstances for entertaining a second application for anticipatory bail.

In fact, even if there were a material change in circumstances after rejection of an application for anticipatory bail by the High Court, a second application, if at all, would be maintainable only before the same Court and not before the Sessions Court. But, the petitioner wrongly moved the Sessions Court even after an application for anticipatory bail was rejected by this Court.

In fact, the order of Sessions Court passed on 05.06.2025 reveals an apparent misstatement made by the petitioner that no application for anticipatory bail on the self-same grounds had been filed/rejected by the High Court.

Therefore, the petitioner did not even approach the Courts with clean hands.

In view of the above discussions, the second application for anticipatory bail filed without any substantial or material change in circumstances is dismissed as not maintainable.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)