

CRM (A) 2016 of 2025
With
CRR 2804 of 2025

An application for bail under Section 438 of the Code of Criminal Procedure, 1973 read with Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Lalgola Police Station Case No. 1024/2024 dated 12.10.2024 under Sections 110/115(2)/118(2)/3(5)/103 of the BNS, 2023 corresponding to G. R. Case No. 5021 of 2024.

Khairul Sk & Anr.
Vs.
The State of West Bengal

Mr. Biswajit Manna
.....For the Petitioners

Mr. Soumik Ganguly
Mr. Sandip Kundu
....For the State in CRM (A) 2016 of 2025

Mr. Rudradypto Nandy
Mr. Soumya Basu Roy Chowdhury
....For the State in CRR 2804 of 2025

While the revisional application was filed challenging an order of issuance of warrant of arrest, proclamation and attachment against the present petitioners, the application for anticipatory bail was filed on behalf of the same petitioners in respect of G. R. Case No. 5021 of 2024 arising out of Lalgola Police Station Case No. 1024 of 2024 dated 12. 10. 2024 under Sections 115(2)/118(2)/110/3(5) of the BNS, 2023 and dated

02.02.25 under Sections 110/115(2)/118(2)/3(5)/103 of the BNS, 2023.

Learned counsel appearing on behalf of the petitioners submits as follows. The FIR in question was lodged on 12.10.2024. A warrant of arrest was issued against the petitioners on 02.02.2025. On 25.03.2025 a non-execution report with prayer for issuance of warrant of arrest was filed. Yet, on 15.05.2025 the Investigating Officer made a prayer for issuance of proclamation and attachment without filing any further N. E. R. and simultaneously on the same date. This is absolutely bad in law. The proclamation being bad in law the petitioners are entitled to move the application for anticipatory bail. On merits, the purported eye witnesses in their statement recorded before the learned Magistrate did not name the present petitioner as an assailant.

Learned counsel appearing on behalf of the State opposed the prayer for bail. He submits that on 15.05.2025 in the prayer made for issuance of proclamation and attachment it was clarified with reference to the three G. D. entries that the petitioner was trying to sell his property. This prompted the Investigating Officer to make the further prayer for issuance of proclamation and attachment. In the

application dated 07.04.2025 a reference was made to the three G. D. entries at the Lalgola Police Station. On merits, there are incriminating materials present against the present petitioner and others. The accused tied the victim to a pole and mercilessly assaulted him that led to his death. There is a statement of an eye witness present at page 12 of the case diary. It specifically named the present petitioner as an assailant. The petitioner has been absconding since long and for this, the proceedings had to be split up.

It appears that the prayer made on 07.04.25 pertains to certain G. D. entries, which were of dates before 25.03.25, the date on which non-execution report was filed and the prayer was made for issuance of warrant of arrest. Although subsequently a date was fixed for execution report, it appears that on the basis of the same facts and without filing a separate N. E. R., a prayer was made on 07.04.25 for issuance of warrant of arrest, proclamation and attachment. Therefore, the proclamation issued was bad in law.

In view of the above, I also find that on the basis of such prayer, attachment could not have been issued on the same day as proclamation issued for the first time.

Therefore, the order of issuance of attachment is also bad in law.

Accordingly, the order dated 15.05.2025 is set aside so far as issuance of proclamation and attachment are concerned. But, the warrant of arrest would remain.

Therefore, the application for anticipatory bail is quite maintainable.

On merits, witnesses may fairly give diverse versions. These are to be tested during trial.

However, it may not be necessary that all eye witnesses would see the incidents for the same length of time or from the same place or angle.

Considering the incriminating materials available in the case diary so far as the petitioners are concerned, especially the statement of an eye witness taking the name of the petitioners as assailants and considering length of time for which the petitioners absconded, I do not consider this to be a fit case for granting anticipatory bail.

The application for anticipatory bail being **C.R.M. (A) 2016 of 2025** is, thus, rejected.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)