

10.09.2025

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rejected

C.R.M.(A) No. 2137 of 2025

In Re:- An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 438 of the Code of Criminal Procedure in connection with Harishchandrapur Police Station Case No. 1276 of 2023 dated 17.12.2023 under Sections 364/302/201/120B of the Indian Penal Code.

And

In Re : Yeasmin Khatun @ Yasmin Khatun @ Asminara Bibi & Anr petitioners

Mr. Joydeep Biswas
Mr. Arup Sarkar
Mr. Sourav Mukherjee
Mrs. Shibani Agarwal
....for the petitioners

Mr. Saryati Datta
Ms. Afreen Begum
... for the State

This is an application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “BNSS”), corresponding to Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”), in connection with Harishchandrapur Police Station Case No. 1276 of 2023 dated 17.12.2023 under Sections 364/302/201/120B of the Indian Penal Code.

Mr. Biswas, learned Advocate appearing for the petitioners, submits that pursuant to a complaint lodged by one Habibur Rahaman, father of the victim, Harishchandrapur Police Station Case No. 1276 of 2023 dated 17.12.2023 was registered against nine persons, including

the present petitioners, who are members of the victim's in-laws' family. It is submitted that the marital relationship between petitioner no. 1 and her husband had become strained, as a result of which the victim had started residing separately from his wife. Subsequently, the beheaded body of the victim was discovered on a railway track.

He places strong reliance on the statement of the de facto complainant recorded under Section 164 of the Code, corresponding to Section 183 of the Bharatiya Nyaya Sanhita, 2023 (for short, "BNS"), wherein it has been categorically stated that it was not the present accused persons but the victim's friends who had committed the murder. It is further submitted that the said statement of the de facto complainant stands corroborated by the statements of two other witnesses recorded under Section 161 of the Code, corresponding to Section 180 of the BNS.

He further submits that from the evidence collected so far by the investigating officer, it is apparent that the victim was last seen in the company of the persons named in the statement of the de facto complainant recorded under Section 164 of the Code. Therefore, according to him, applying the principle of "last seen together," the present application deserves to be allowed.

In view of the aforesaid, he contends that the petitioners ought not to be taken into custody or deprived of their personal liberty, which, according to him, constitutes one of the most cherished fundamental rights guaranteed to a citizen.

Mr. Datta, learned Advocate appearing for the State, vehemently opposes the prayer for anticipatory bail of the present petitioners. He submits that upon conclusion of investigation, a charge-

sheet has already been filed, wherein the petitioners have been shown as accused persons. He further submits that, at this stage, the scope for appreciation of evidence is extremely limited. It is also contended that further investigation in the case is still in progress and, therefore, it would not be appropriate to presume that custodial interrogation of the petitioners is unnecessary merely on the basis of the statement of the de facto complainant recorded under Section 164 of the Code, treating the same as sacrosanct.

Heard the learned Advocates representing both parties and perused the Case Diary along with other materials on record.

In the present case, the FIR contains an allegation by the de facto complainant that the petitioners, along with their associates, had committed the offence. However, in his statement recorded under Section 164 of the Code, corresponding to Section 183 of the Bharatiya Nyaya Sanhita, 2023 (BNS), the de facto complainant attributed the commission of the offence to a different set of accused persons. Thus, there exists a contradiction between the version disclosed in the FIR and the statement of the de facto complainant recorded under Section 164 of the Code.

However, in the charge-sheet, the present petitioners, along with certain other individuals, have been shown as accused persons. The charge-sheet further records the opinion of the autopsy surgeon to the effect that the injuries found on the dead body did not appear to have been caused by a railway wheel and that the death was due to ante-mortem injuries, which were homicidal in nature. The charge-sheet has been filed with a prayer for submission of a supplementary charge-sheet.

There is no direct evidence against the petitioners and the entire case rests on circumstantial evidence. In view of the contradictory statements made by the de facto complainant, there remains sufficient scope for further investigation to unearth the real facts. At this stage, the scope for appreciation of evidence is extremely limited, and it would be inappropriate to arrive at any conclusive finding or to treat the statement of the de facto complainant recorded under Section 164 of the Code as sacrosanct while discarding the version disclosed in the FIR. Even at this stage, it is not possible to take any decision by applying the principle of “last seen together” as well. Therefore, consider the facts and circumstances, it would not appropriate to hold that custodial interrogation of the present petitioners are not required.

Admittedly, liberty of any person should not be lightly dealt with, as deprivation of liberty has profound meaning for an individual, and incarceration can leave a lasting impact on one’s personality. However, individual liberty can be restricted in the interest of larger social welfare, and it has been observed that liberty is nothing but restricted freedom, which can be curtailed for the interest of justice and following due process of law.

Therefore, based on reasons set out in the preceding paragraphs, it would not be appropriate or justified to accept the petitioners’ prayer for pre-arrest bail.

Accordingly, application for pre-arrest bail of the petitioners, is, thus, rejected.

(Partha Sarathi Chatterjee, J.)

