

16.
08.12.2025
Bd.
Ct. 29

CRR 4564 of 2025
Abhishek Tudu

Vs.
The State of West Bengal

Mr. Pawan Kumar Gupta
Mr. Vijay Verma
Mr. Subrata Saha
Mr. Abhik Biswas
Ms. Sofia Nesar
Mr. Santanu Sett

... for the petitioner.

Mr. Debasish Roy
Mr. Suman De

... for the State.

This is an application wherein petitioner has assailed the order dated 25.07.2025 passed in Criminal Misc. Case No. 2830 of 2025.

By the impugned order court below held that since the instant proceeding has been initiated under section 316(5) of the BNS and since a Special Court has been designated to deal with the trial of cases under section 316(5) of the BNS so the anticipatory bail application filed by the petitioner is not maintainable before sessions Judge but it should be heard by the concerned Special Judge.

Being aggrieved by the aforesaid order, Mr. Gupta, learned counsel appearing on behalf of the petitioner submits that the Court below/Sessions Judge has erred in holding that he has got no jurisdiction to deal with the anticipatory bail application in connection with the offence involved under section 316(5) of the BNS. The distinction between Sessions Judge with that of a Special Judge is purely functional and not jurisdictional. He further contented that the power under section 482 BNSS is not limited or curtailed unless expressly excluded by the legislature.

The West Bengal Criminal Law Amendment (Special Court's) Act, 1949 contains no express bar to the exercise of inherent power. The Act of 1949 operates in addition to and not in derogation of the BNSS/Cr.P.C. Section 4 of 1949 Act, only specified that certain schedule offences thereon are to be tried by the Special Court but it does not create any embargo on pre-trial proceeding. Special Act does not oust the operation of the general procedural law unless explicitly stated. Accordingly he prayed for setting aside the order impugned and to direct the Sessions Judge to hear the anticipatory bail application filed by the petitioner.

Learned Public Prosecutor, High Court Calcutta, appearing on behalf of the State submits that the anticipatory bail application even in a case of an offence under section 316(5) of the BNSS is maintainable before the Sessions Judge and Sessions Judge can only hear and dispose of such application and not the Special Court.

Referring a judgment passed by the Kerala High Court in ***Prince Vs- State of Kerala at Ernakulam*** (in bail appeal no. 7364 of 2025) he argued that the Special Judge is empowered to conduct warrant trial alone and not sessions trial and therefore he could not be designated as a Sessions Judge to dispose of anticipatory bail invoking jurisdiction under section 482 BNSS in offences involving section 316(5) of BNS.

Having heard learned counsel appearing for the petitioner and the State it appears that section 482(1) of the BNSS is required to be reproduced at the outset.

“When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under

this section; and that court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.”

The words “*reason to believe that he may be arrested on an accusation of having committed a non-bailable offence*” is significant which implies that sine-qua non of this provision is that when a person has a reason to believe that he may be arrested on an accusation of non-bailable offence, he may apply to High Court or Court of Sessions.

Therefore exercise of Power under section 438 Cr.P.C. is dependent upon two conditions (i) an accusation (ii) a reasonable apprehension that the petitioner may be arrested on the basis of such accusation.

The word “accusation” has not been defined in the BNSS. However, it’s dictionary meaning is “a claim that somebody has done something illegal as wrong”. Supreme Court in **Gurbansh Singh Sibba –vs- State of Punjab, (1980) 2 SCC 565** held that registration of FIR is not a condition precedent for the exercise of power under section 438 Cr.P.C/482 BNSS . The Court can grant anticipatory bail even before the FIR is filed, provided that petitioner has shown credible grounds for apprehension of arrest.

Referring section 5(3) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 a legal fiction has been sought to be created by the Court below that for all purposes the Court of the Special Judge shall be deemed to be a court of session including to deal with a prayer for anticipatory bail. Therefore, emphasis sought to be given by the Court below is the word “Provisions” occurring in later part of sub-section (3) of

section 5 of the Act which refers to the provision of the Code of Criminal Procedure or BNSS as the case may be.

The Supreme Court in several cases observed that Power conferred under section 438 Cr. P.C. is an extraordinary power (**Balachand Jain -vs- State of M.P., AIR 1977 SC 366, Gurubux Sibbin -vs- State of Punjab**). None of the provisions of the Act of 1949 indicates legislative intent of conferring extraordinary power under section 438 for granting anticipatory bail.

Section 9 and 10 of Cr.P.C. states about what is court of sessions and sub ordination of Assistant Sessions Judges. Section 10(3) speaks about making special provision by Session Judge for the disposal of any urgent Applications (like bail applications) in the event of his absence or inability to act, by an additional or Assistant Session Judge or Chief Judicial Magistrate and only upon assignment such Judge or Magistrate shall be deemed to have jurisdiction to deal with such urgent Applications.

On a careful reading of section 9 and 10 of Cr.P.C., it is very much clear that the head of the Sessions unit is the Session Judge who will be appointed by High Court and who shall be in charge of the entire Sessions Division. The High Court may also appoint Additional Session Judges and Assistant Sessions Judges and such Assistant Sessions judges would be subordinate to Sessions Judge. Therefore the intention of legislature is clear that High Court has the power to appoint Additional and Assistant Sessions Judges additionally who shall exercise their respective jurisdiction but it will be to the exclusion of the Session Judges, who is only the head of the Sessions Division.

In ***State of Tamil Nadu Vs. Krishnaswami Naidu*** reported in **AIR 1979 SC 1255**, Apex Court held that the special judge under the criminal Law (Amendment) Act, for some purposes is deemed to be a Sessions Judge and for other purposes deemed to be Magistrate. He is empowered to take cognizance without the accused being committed, however in the later part he wears the cloak of Sessions Judge while conducting trial.

Coming back to the present context, it appears that in a proceeding under section 409 IPC/316(5) of BNSS , the act of Special Judge comes into play only on filing of an FIR, basing on which the court thereafter takes cognizance, being acted as a Magistrate. Therefore the Special Judge does not come into play before lodging an FIR, disclosing offence under section 409 IPC, but for presenting an application under section 482 BNSS, a reasonable apprehension of an individual is sufficient, which can prompt him to file Application for anticipatory bail before court of sessions, even if FIR has not yet been lodged under that provision. Therefore the deeming provision created by legal fiction in section 5(3) of the Act of 1949 is to be construed that the Special judge is to be deemed to be a Court of Session for the purpose of trial and not for the purpose entertaining an Application under section 482 of BNSS. The language of the provision in the Act of 1949 makes it clear that it was never the intention of legislature to confer power of hearing anticipatory bail application by a Special Judge. The court of special judge could neither be brought under the ambit of a Magistrate court or of a Sessions Court and therefore it cannot be said that Court of Special Judge could be deemed to be

a Court of Sessions for the purpose of deciding application of anticipatory bail. The Court of Sessions being the head of Sessions Division alone is empowered to deal with applications for anticipatory bail.

Last but not the least the words used in section 482 of BNSS that “*he may apply to the High Court or the court of sessions*” has got no ambiguity in reading such provision, which is *pari materia* with the provision of section 438 of Cr.P.C. Since there is no vagueness or ambiguity or absurdity in the said provision, there was no requirement for the court below to take the role of interpreter for the purposes interpretation of section 482 BNSS with the aid of section 5(3) of the Act of 1949. The purpose of interpretation can never be what the Judge think but to make it what the legislature intended it to be. If the legislature had any such intention to confer power upon Special Judge for consideration of anticipatory bail prayer in respect of some of the special offences, they would have mentioned it in the statute. In ***A.G. Syed Mohiudeen Vs. Shri Jeyaram Educational Trust*** reported in **(2010) 2 SCC 513**, the Apex Court made the point clear, observing

“11. *It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the legislature or the lawmaker, a court should open its interpretation toolkit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of*

interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be.”

In view of the aforesaid discussion CRR 4564 of 2025 is allowed.

The impugned order dated 25.07.2025 so far as it relates to the observation that the Sessions Judge has no jurisdiction to deal with anticipatory bail application where the allegation against the accused is under section 316(5) of BNSS is hereby set aside.

Learned court below is directed to hear the anticipatory bail application in accordance with law within a period of two weeks from the date of communication of the order without being influenced by any observation made herein on the merit of the bail application.

The investigating agency shall not arrest the petitioner for a period of two weeks from the communication of the order or till the hearing of the anticipatory bail application filed by the petitioner before the court below, whichever is earlier.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)