

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.M. (M) 2610 of 2025

The State of West Bengal
versus
Prasanta Barman

For the Petitioner/State : Mr. Debasish Roy, Ld. P.P.,
Ms. Afreen Begum.

For the Opposite Party : Mr. Kalyan Bandopadhyay, Sr. Adv.,
Mr. Sourav Chatterjee, Sr. Adv.,
Mr. Avik Ghatak,
Mr. Soham De Dhara,
Mr. D. Mukherjee,
Mr. Sandip Majumder.

Heard On : 16.12.2025 and 22.12.2025.

Judgement On : 22-12-2025.

Tirthankar Ghosh, J. :

The State of West Bengal has challenged the order dated 26.11.2025 passed by the learned Sessions Judge, North 24-Parganas in Criminal Misc. Case No. 3710 of 2025 along with the order dated

29.11.2025 passed by the learned ACJM, Bidhannagar in connection with Bidhannagar P.S. Case No. 191 of 2025.

Records reflect that the order dated 26.11.2025 was passed by the learned Sessions Judge, North 24-Parganas wherein the prayer for anticipatory bail of the opposite party was allowed. Consequently, the accused/opposite party surrendered before the learned ACJM, Bidhannagar, North 24-Parganas on 29.11.2005 and was granted bail.

Briefly stated the facts of the case, emanates from an information furnished on 31.10.2025 with the Officer-in-Charge, Bidhannagar South Police Station by one Debasish Kamila, son of Amulya Kamila wherein it was contended that the accused/opposite party along with others on 28.10.2025 in the morning abducted his brother-in-law viz. one Swapan Kamila from a jewellery shop named as 'Basanti Jewellers' situated at 115, Duttabad near Friends Club. Thereafter his brother-in-law could not be communicated with or traced. Later on, the complainant identified an unknown dead body as that of his brother-in-law, Swapan Kamila which was found at Jatragachi within the jurisdiction of New Town Police Station. The informant suspected that the said Prasanta Barman (accused/opposite party) and his associates murdered his brother-in-law and threw him away at an abandoned place. As such, he

prayed before the police authority to take action against the accused persons.

The State/petitioner emphasized that the order dated 26.11.2025 passed by the learned Sessions Judge, 24 Parganas (North) was in gross ignorance of the material particulars available in the Case Diary and the same was granted on considerations which were detrimental to the progress of the investigation.

What weighed with the learned trial court was that the accused/opposite party was a WBCS Officer and since the police did not arrest him, he is entitled to be released on anticipatory bail.

It was further contended that the merits of the case; the complicity of the present petitioner and the fact that whether any offence has been made out or not was never considered in the impugned orders. The orders suffer from gross irregularities which is liable to be interfered with in view of the consequential order being passed by the learned ACJM, Bidhannagar wherein the learned ACJM, Bidhannagar only relied upon the order dated 26.11.2025 passed by the learned Sessions Judge, Barasat while granting anticipatory bail to the accused/opposite party and released the petitioner on bail.

The prayer of the State in the application is for setting aside the order dated 26.11.2025 passed by the learned Sessions Judge, Barasat in Criminal Misc. Case No. 3710 of 2025 and the order dated 29.11.2025 wherein bail was granted by the learned ACJM, Bidhannagar. According to the State, the orders passed do suffer from inherent deficiencies as the merits of the case were not at all considered and contradictory versions were recorded by the learned Sessions Court while passing the impugned order.

An Affidavit-in-opposition has been used on behalf of the accused/opposite party which has been affirmed by the accused/opposite party himself challenging the authority and jurisdiction of this Court. However, apart from the other contentions, series of judgments have been relied upon in support of such contentions.

Mr. Bandopadhyay, learned senior advocate appearing on behalf of the accused/opposite party while addressing the Court submitted that the application of the State for cancellation of bail is not maintainable and as the learned Additional Public Prosecutor appearing before the learned Magistrate did not raise any objection when the accused/opposite party surrendered before the Court, there is no scope for interference at this stage, before this Court.

Learned Senior Advocate has also drawn the attention of the Court to the affidavit affirmed on behalf of the State which has been kept blank, in spite of the same it has been affirmed by the Commissioner of Affidavit, High court, Appellate Side, Calcutta.

In order to fortify his argument to the effect that the determination of this Court is restricted only to applications relating to Section 439 of the Code of Criminal Procedure/Section 483 of the BNSS, reliance was placed on **Sohan Lal Baid V. State (AIR 1990 Calcutta 168)**, reference was made to paragraph 23 which is extracted below :-

“23. The foregoing review of the constitutional and statutory provisions and the case law on the subject leaves no room for doubt or debate that once the Chief Justice has determined what Judges of the Court are to sit alone or to constitute the several Division; Courts and has allocated the judicial business of the Court amongst them, the power and jurisdiction to take cognizance of the respective classes or categories of cases presented in a formal way for their decision, according to such determination, is acquired. To put it negatively, the power and jurisdiction to take cognizance of and to hear specified categories or classes of cases and to adjudicate and exercise any judicial power in respect of them is derived only from the determination made by the Chief Justice in exercise of his constitutional, statutory and inherent powers and from no other source and no cases which is not covered by such determination can be entertained, dealt with

or decided by the Judges sitting singly or in Division Courts till such determination remains operative. Till any determination made by the Chief Justice lasts, no Judge who sits singly can sit in a Division Bench nor can a Division Bench be split up and one or both of the Judges constituting such Bench sit singly or constitute a Division Bench with another Judge and take up any other kind of judicial business.”

Learned Senior Advocate submitted that the Master of the Roster being the Hon'ble Chief Justice and the determination not being assigned to this Court, this Court is without any authority to hear out the application and to that effect reference was made to **Garden Reach Shipbuilders and Engineers Limited V. Grse Limited Workmens Union and Others (2025 SCC Online SC 582)**. Paragraph 9 was emphasized by the learned Senior Advocate which reads as follows:-

“9. In the light of the law laid down by the High Court itself in Sohan Lal Baid v. State of West Bengal, as approved by a three-Judge Bench of this Court in State of Rajasthan v. Prakash Chand which has subsequently been approved by a Constitution Bench in Campaign for Judicial Accountability and Reforms v. Union of India, as well as Rule 26 (supra), we hold that any order which a bench – comprising of two judges or a single judge – may choose to make in a case that is not placed before them/him by the Chief Justice of the High Court or in accordance with His Lordship's directions, such an order is without jurisdiction. In other words, an adjudication,

beyond allocation, is void and such adjudication has to be considered a nullity. It needs no emphasis that the Chief Justice of the High Court, being the primus inter pares, has been vested with the power and authority to set the roster, as articulated in Sohan Lal Baid (supra), and such roster is final and binding on all the ‘Companion Justices’ of the said court. Plainly, therefore, the order dated March 11, 2024 and the impugned order are without jurisdiction.”

Learned Senior Advocate also relied upon the judgment of **Sushila Aggarwal and Others V. State (NCT of Delhi) and Another** and emphasized on paragraphs 92.9, 92.11 and 92.12 on the issue relating to discretion between an application for cancellation of bail in terms of Section 439 (2) Cr.P.C. and an order passed while granting anticipatory bail. The paragraphs relied upon by the learned Senior Advocate which have been referred to are extracted below :-

“92.9. *It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.*

92.11. *The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of*

the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See Prakash Kadam v. Ramprasad Vishwanath Gupta [Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189 : (2011) 2 SCC (Cri) 848] ; Jai Prakash Singh [Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468] ; State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] .) This does not amount to “cancellation” in terms of Section 439(2) CrPC.

92.12. *The observations in Siddharam Satlingappa Mhetre v. State of Maharashtra [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] (and other similar judgments) that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh v. State of Maharashtra [Salauddin Abdulsamad Shaikh v. State of Maharashtra, (1996) 1 SCC 667 : 1996 SCC (Cri) 198] and subsequent decisions (including K.L. Verma v. State [K.L. Verma v. State, (1998) 9 SCC 348 : 1998 SCC (Cri) 1031] , Sunita Devi v. State of Bihar [Sunita Devi v. State of Bihar, (2005) 1 SCC 608 : 2005 SCC (Cri) 435] , Adri Dharan Das v. State of W.B. [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 : 2005 SCC (Cri) 933] , Nirmal Jeet Kaur v. State of M.P. [Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558 : 2004 SCC (Cri) 1989] , HDFC Bank Ltd. v. J.J. Mannan [HDFC Bank Ltd. v. J.J. Mannan, (2010) 1 SCC 679 : (2010) 1 SCC (Cri)*

879] , *Satpal Singh v. State of Punjab* [*Satpal Singh v. State of Punjab*, (2018) 13 SCC 813 : (2019) 1 SCC (Cri) 424] and *Naresh Kumar Yadav v. Ravindra Kumar* [*Naresh Kumar Yadav v. Ravindra Kumar*, (2008) 1 SCC 632 : (2008) 1 SCC (Cri) 277]) which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time are hereby overruled.”

Learned Senior Advocate appearing for the accused opposite party also referred to paragraphs 8 and 9 of ***Bharatbhai Bhimabhai Bharwad V. State of Gujarat and Others*** reported in **(2020) 18 Supreme Court Cases 693** which dealt with the grounds of challenge while exercising the discretion in granting bail and the powers of cancellation of bail referred to in Section 439 of Cr.P.C. The referred paragraphs are quoted below :-

“8. Though the application has been filed before the High Court under Section 439(2) CrPC i.e. an application for cancellation of bail, by perusal of the grounds raised in the application, it is seen that the appellant has raised grounds challenging the exercise of discretion in granting bail to Respondents 2 and 3 under Section 439 CrPC and that the order granting bail is unsustainable in law. In effect, the application filed was only challenging the order of grant of bail on the ground that it was an arbitrary exercise of discretion. The Court while granting bail should exercise its discretion in a judicious manner by taking into consideration the relevant

facts as held in State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] .

9. *It is well settled that the consideration applicable for cancellation of bail and consideration for challenging the order of grant of bail on the ground of arbitrary exercise of discretion are different. While considering the application for cancellation of bail, the court ordinarily looks for some supervening circumstances like; tampering of evidence either during investigation or during trial, threatening of witness, the accused is likely to abscond and the trial of the case getting delayed on that count, etc. Whereas, in an order challenging the grant of bail on the ground that it has been granted illegally, the consideration is whether there was improper or arbitrary exercise of discretion in grant of bail. The appellant has challenged the very grant of bail on the ground of arbitrary exercise of discretion ignoring the relevant materials to be considered in the application for bail. Since the High Court proceeded under the footing as if the appellant had filed the application only for cancellation of bail for which, the consideration is different, the impugned order [Bharatbhai Bhimabhai Bharwad v. State of Gujarat, 2019 SCC OnLine Guj 1524] is liable to be set aside and the matter is remitted to the High Court for consideration of the matter afresh.”*

On behalf of the accused opposite party a further contention in reply has been taken that as the state admits that the application was filed before a different Court and the matter was listed before this Court,

the contention raised by the accused opposite party has substance and the authorities referred to above do substantiate such contentions.

Additionally, it was submitted that the orders which were passed by the learned ACJM, Bidhannagar while granting bail and the learned Additional Public Prosecutor not opposing the prayer for bail was exclusive within the domain of the said authorities and the petitioner had no role in the manner in which the authorities acted.

I have taken into account the submissions of the learned Public Prosecutor as well as that of the learned Senior Advocate appearing on behalf of the accused/opposite party along with the Case Diary, which has been placed by the State. From the Case Diary, it reflects that the investigation of the case is still in progress, and the investigating agency in course of investigation has been successful in collecting materials along with statement of eye-witnesses, who saw the deceased being kidnapped from the shop at Duttabad. There are eye-witnesses who have seen the deceased being assaulted; there is an injured eye-witness who has narrated the genesis of the incident and the manner in which he was assaulted; there are witnesses who have administered treatment to the injured witness and there are eye-witnesses also who have seen the dead body being carried. There are CCTV footages, which primarily support the version of all the eyewitnesses including the factum of dead

body being removed. Further, the statement of the injured witness was recorded before the learned Judicial Magistrate.

An analysis of the version of the eye-witnesses revealed that the present accused/ opposite party was the mastermind and took a lead role in commission of the alleged offence and wherever required, he disclosed his identity as a Magistrate. The background of the facts which reflect that the accused/opposite party organized his associates, used his official position for commission of the offence and tried to derail the investigation by manufacturing false alibis. As the investigation of the case is in progress, further disclosure of details at this stage is unwarranted but the materials which have been collected, prima facie establishes a fact that it is the accused/opposite party who engineered the entire series of events and the others were there to implement his decision. Surprisingly, the learned Sessions Court, while passing the Order dated 26.11.2025, in Criminal Misc Case no. 3710/2025 have offered contradictory reasons in order to arrive at his conclusion. While the learned Sessions Court acknowledged the fact that the allegations levelled against the petitioner are serious and that investigation has progressed to a great extent, but it allowed the anticipatory bail on the ground that the accused is a member of the West Bengal Civil Service and as such his custody will not be required. Much emphasis was laid

on the fact that the process of investigation will not suffer in case such Government Officer is allowed to remain on anticipatory bail. The learned Additional Chief Judicial Magistrate, Bidhannagar, on 29.11.2025 passed an order which is consequential in nature as the order itself reflects that since the Sessions Judge was pleased to grant an anticipatory bail and the accused surrendered before the Court, he may be released on bail on furnishing the bond on such terms and conditions as the learned Sessions Judge, North 24 Parganas was pleased to direct in the order of the anticipatory bail.

None of the Courts took into account the active participatory role of the accused in commission of the offence for which the investigation is being carried out. The Sessions Court acknowledged the accusations to be very serious and that the other accused persons have been arrested but granted anticipatory bail without any cogent reasons touching on the merits of the case. An analysis of the evidence collected by the investigating agency goes to show that the present accused/opposite party was the one who used the blue beacon car for abducting the deceased from the jewellery shop, while being assisted with a number of persons and he also wrongfully restrained the deceased at his residence at New Town. There were eye-witnesses, who witnessed the fact of the deceased being continuously assaulted for extorting statement and in

the evening hours because of such continuous assault, the deceased lost his senses and subsequently, succumbed to the injuries being inflicted upon him. The injuries sustained by the deceased are also reflecting in the Post-Mortem report.

The statements of each of the witness would reveal that the alleged offence was committed by and at the behest of the accused/opposite party and the others aided him. The conduct of the accused reflects that he was overconfident of his official position, took law in his own hands, and exposed himself in a manner which would strike at the core of public order. It would be travesty of justice, if the persons, who aided him are suffering custody and the accused who engineered the act would be enjoying anticipatory bail more particularly in a murder case, only on the grounds that he happens to be a WBCS officer.

It would not be out of place to state that the accused/opposite party attempted to derail the investigation by plea of alibi. However, the air tickets and the information received from the airlines company would go to show that after commission of the alleged offence, the accused along with some of his associates fled away to North Bengal.

The ocular as well as the electronic evidence in this case goes to show the complicity of the petitioner which cannot be brushed away because of his official position.

The plea of the accused/opposite party that this Court is without any authority to adjudicate the present case which is on the issue relating to anticipatory bail, I hold that a criminal case within its ambit encompass series of events and there may be change of circumstances. Anticipatory bail was initially granted to the accused and it is settled proposition of law that an anticipatory bail ends with either the accused being arrested by the investigating officer or the bail being granted when the accused appears before the Court. However, an order of anticipatory bail is never binding on the learned Magistrate and the learned Magistrate is supposed to consider the change of circumstances. The accused/opposite party could have taken a similar plea before the Co-ordinate Bench also which is having the roster/determination for deciding cases under Section 482 of the BNSS or Section 438 of the Cr.P.C, i.e. the accused has been granted bail by the ACJM, Bidhannagar and the authority of a Court deciding the anticipatory bail has been exhausted and it would be the Court having jurisdiction to decide cases under Section 439 of Cr.P.C. / Section 483 of the BNSS which will have the authority to decide such cases.

Having considered that the order of anticipatory bail terminated with the petitioner surrendering before the learned ACJM, Bidhannagar, I am of the opinion that this Court is the proper Court to decide the issue relating to cancellation of bail of the accused/opposite party and the application for cancellation of bail being referred to this Court is in the right perspective.

So far as the merits of the order of anticipatory bail which was granted by the learned Sessions Judge and which weighed with the learned ACJM, Bidhannagar for granting bail, I am of the opinion that as a settled position of law while considering an application for anticipatory bail or bail, it is the duty of the court of law in a heinous offence to consider – (a) the nature and gravity of the accusation, (b) danger, of course of justice being thwarted by anticipatory bail or bail being granted, (c) character, behaviour, means, position and standing of the accused, (d) reasonable apprehension of the witnesses being influenced, (e) severity of punishment in the event of conviction and above all whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence.

The aforesaid consideration did not weigh at all with the learned Sessions Judge while granting the anticipatory bail in Criminal Misc. Case No. 3710 of 2025 and the consequential order passed by the

learned ACJM, Bidhannagar lacks any application of mind as it followed the order of anticipatory bail without assigning any independent reasons. The impugned orders passed by the learned Sessions Judge, North 24-Parganas and the learned ACJM, Bidhannagar lack comprehensive reason and ignore relevant materials while passing the impugned orders rendering the same to be perverse and liable to be set aside. Accordingly, the order dated 26.11.2025 passed by the learned Sessions Judge, North 24-Parganas and the order dated 29.11.2025 passed by the learned ACJM, Bidhannagar are hereby set aside. The order of bail passed is hereby cancelled.

The accused/opposite party is directed to surrender before the learned ACJM, Bidhannagar forthwith preferably within 72 hours.

Accordingly, CRM (M) 2610 of 2025 is allowed.

Case diary be returned to learned advocate appearing for the State.

However, as a note of caution, I find that since the affidavit was kept blank, as pointed out on behalf of the accused/opposite party, there was a gross negligence on the part of the Office of the Commissioner of Affidavit, High Court, Appellate Side, Calcutta. A cost of Rs.10,000/- (Rupees Ten Thousand) is imposed upon the Oath Commissioner who affirmed the affidavit on 1st December, 2025 as the

paragraph 2 was kept blank which is a gross negligence in the official duty of the Oath Commissioner.

Registrar General, High Court, Calcutta is directed to recover such amount from the concerned officer who affirmed oath on 1st December, 2025.

All concerned parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)