

**IN THE HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 39 of 2025

Maj Sachin PremSingh and Anr.

Vs.

State of West Bengal and Anr.

For the Petitioners : Mr. Sudipto Kr. Mazumdar,
: Mr. Ajoy Kr. Singhanian

For the State : Mr. Nilay Chakraborty, Ld. APP
: Mr. Aniruddha Biswas,

Judgment On : 13.06.2025

Rai Chattopadhyay, J.

(1) An order of the Judicial Magistrate at Kurseong dated **November 26, 2024**, passed in GR Case No. 26 of 2019, is under challenge in this revision. Mr. Sudipto Kumar Majumder, learned DSGI, who has represented the petitioners, has termed the impugned order as above to be a gross irregularity and unauthorized exercise of power by the learned Magistrate which is not vested in it by law and that for the reasons as above, the same is also illegal and liable to be set aside.

(2) Mr. Majumder has submitted that on the basis of some untrue and frivolous allegations the de-facto complainant has lodged an FIR being registered as the Kurseong Police Station Case No. 21/19 dated 05/02/2019 under sections 143, 447, 341, 325, 354, 427, 506 and 34 of the Indian Penal Code, against the two petitioners. It is submitted further that the petitioners are the defense personnel who have been falsely and motivatedly entangled in the instant criminal case, since in the course of their duty they have restrained the complainant and others to forcefully take possession of the defense land. That, the High Court vide order dated **June 28, 2019**, has granted bail to the present petitioners under section 438 of the Criminal Procedure Code and has directed as follows :

"In view of the above, we allow the said application for anticipatory bail.

Accordingly, we direct that in the event of arrest, the petitioners shall be released on bail upon furnishing bond of Rs. 10,000/- (Rupees ten thousand) each, with two sureties of like amount each, to the satisfaction of the arresting officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

The application for anticipatory bail is thus allowed."

(3) The petitioners are aggrieved that despite anticipatory bail being granted to them by the High Court with the directions/conditions as mentioned above, learned Magistrate in absolute defiance of the same has directed in the said impugned order for issuance of the non-bailable warrant against both the petitioners. Mr. Majumder has strenuously argued that the petitioners who are the accused persons in the said GR Case No. 26 of 2019, in the Court of the Judicial Magistrate at Kurseong have already been enlarged on bail under section 438 of the Cr.P.C., in connection with the said case. Therefore, it is not permissible under law that warrant be

issued against the said accused persons, after they having been enlarged on bail. The petitioners have thus prayed for setting aside of the impugned order dated **November 26, 2024**.

(4) Parties are represented.

(5) The very short issue involved in the instant case for determination is whether during the period when the order of the High Court under section 438 of the Cr.P.C. is in vogue the Magistrate can issue a non-bailable warrant of arrest against the accused persons or not. A negative answer would obviously render the impugned order to be set aside.

(6) A warrant cannot be issued against an individual who has been granted anticipatory bail. If someone is granted anticipatory bail, he is protected from arrest and if arrested he must be released upon fulfilment of the conditions imposed by the Court while granting the anticipatory bail. A warrant cannot be issued against him because the bail order already provides him protection from arrest. The only event when such person may be arrested is when he violates the conditions of bail as directed by the Court for him to comply with.

(7) The petitioners have been granted bail under section 438 of the Cr.P.C. by the High Court on **June 28, 2019**. Charge-sheet has been filed by the police in Kurseong Police Station Case No. 21/19 dated 05/02/2019, on **June 10, 2024**. It is mentioned in the charge sheet that the accused persons are **“Bailed by Court”**.

(8) It appears that during investigation and before filing of charge sheet by police, the petitioners have been granted anticipatory bail by the Court and the said fact has also been mentioned in the charge sheet itself. Sometimes the Courts are faced with the question if after submission of chargesheet and issuance or non bailable warrant by the Magistrate, a Court can entertain the petitioner's prayer for grant of anticipatory bail or not. But facts are little different in the instant case. Here the petitioners have been granted anticipatory bail by the Court much prior to submission of charge sheet by the police. It is noticeable that learned Magistrate, in his enthusiastic pursuit to exercise an overwhelming statutory power of him which has the effect of even curtailing the personal liberty of an individual, has perhaps overlooked such recording in the charge sheet. Thus, learned Magistrate has committed a wrong by delivering an order without even feeling any necessity to cite as to what has been recorded by police in the charge sheet regarding grant of bail to the accused persons/petitioners. An otherwise beautifully crafted impugned order has thus suffered from gross error and absolute lack of mindful considerations by the Magistrate, while issuing order for non bailable warrant of arrest against the present petitioners. In the facts and circumstances of the instant case the said impugned order suffers from illegality and is liable to be set aside.

(9) Hence the instant revision is allowed with the following directions:

- i. The impugned order dated November 26, 2024, passed by the Judicial Magistrate at Kurseong in GR Case No. 26 of 2019, in connection with Kurseong Police Station Case No. 21/19 dated 05/02/2019

under sections 143, 447, 341, 325, 354, 427, 506 and 34 of the Indian Penal Code, is set aside;

- ii. Let the petitioners immediately appear before the learned Magistrate within maximum three weeks from the date of this order and submit an undertaking that conditions imposed by the Court while enlarging them on bail vide order dated June 28, 2019, have been duly complied with by them;
- iii. Similar undertaking shall also be filed by the Investigation Officer before the Learned Magistrate that the said accused persons have duly complied with the conditions imposed by the Court while enlarging them on bail vide order dated June 28, 2019;
- iv. Let the trial Court proceed thereafter in trial, in accordance with law and conclude the same as expeditiously as possible.

(10) The instant revision is thus allowed and disposed of.

(11) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)