

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

**CRM (A) 223 of 2025
Kausik Banik
Vs.
The State of West Bengal**

Before: The Hon'ble Justice Arijit Banerjee

For the Petitioner	: Mr. Sourav Chatterjee, Sr. Adv. Mr. Avik Ghatak, Adv. Mrs. Deblina Ray, Adv. Mr. Sampad Das, Adv.
For the State	: Mr. Joyjit Chowdhury, Ld. Addl. AG Mr. A. S. Chakraborty, Ld. APP. Ms. Namrata Das, Adv. Mr. Subhasis Misra, Adv.
Judgment On	: 22.04.2025

Arijit Banerjee, J. :-

1. The petitioner is a lawyer practising in Alipurduar. The crux of the allegation against the petitioner is that he has forged the signature of his uncle,

Sukhendra Nath Banik as surety, on a huge number of bail bonds, over the years between 2014 and 2022. Sukhendra is also an Advocate but does not practise. He was a registered surety till sometime in 2022 when on his request, his registration was suspended.

2. It is alleged that the petitioner forged his uncle's signature as surety on bail bonds executed by accused persons who were his clients and who were granted bail by the Court.

3. Mr. Chatterjee, learned Senior Advocate representing the petitioner, submitted that custodial interrogation of the petitioner is not necessary. The petitioner has cooperated with the Investigation Officer at all material times. The petitioner has promptly responded to notices under Section 91 Cr.P.C (Section 94 BNSS) as also Section 41B Cr.P.C. Learned Advocate referred to the order dated January 29, 2025, passed by a Division Bench of this Court in MAT 9 of 2024, arising out of a writ petition that Sukhendra had filed. Learned Advocate submitted that in paragraph 13 of the said order, the Hon'ble Bench observed:-"It shall be open to the Investigating Agency to subject suspects irrespective of their standing to custodial interrogation to unravel the truth and bring offenders to trial." He said that in spite of such liberty, the police never took the petitioner into custody. This was obviously because the petitioner extended full cooperation and assistance to the police.

4. Learned Advocate also submitted that the petitioner is presently in Delhi taking care of his unmarried sister who is undergoing treatment for blood cancer. That is why, he could not report to the police in terms of the notices

issued in the last week of March, 2025 and first week of April, 2025. However, the petitioner responded to the said notices in writing explaining his predicament and informing the reason why he could not record his attendance. He also sent relevant medical documents pertaining to his sister's ailment and treatment.

5. Learned Additional Advocate General (in short 'AAG') strongly opposed the petitioner's prayer for anticipatory bail. He took us through the material in the case diary in great detail. He said that the allegation against the petitioner is serious; it has far reaching ramifications. The entire judgeship is tainted because of the criminal activities of the petitioner. In course of investigation, the police have gathered sufficient incriminating material against the petitioner. 2954 forged bail bonds have been made available by the District Judge, Alipurduar to the Investigating Authority.

6. Referring to an order dated September 27, 2024, passed by a Division Bench of this Court in MAT 9 of 2024 (***Sukhendra Nath Banik v. State of West and Bengal & Ors.***) learned AAG submitted that because of the seriousness of the offence, the Division Bench directed the jurisdictional Superintendent of Police to monitor the criminal investigation. A Special Investigation Team (SIT) has been constituted for the purpose of investigation.

7. Learned AAG also referred to a report of the Questioned Document Examination Bureau, Government of West Bengal, CID, West Bengal dated August 27, 2024, and showed me the expert opinion to the effect that the signature on the concerned bail bonds purporting to be those of Sukhendra as

registered surety, are not Sukhendra's signature. Nor are those signatures in the handwriting of the petitioner herein. The petitioner has not complied with the request of the police to make available the relevant original documents. Investigation is in progress. Custodial interrogation of the petitioner may be necessary. He also drew my attention to the statement of the petitioner recorded under Section 161 Cr.P.C.

8. Before proceeding further, I would like to note certain established principles of law pertaining to anticipatory bail:-

(i) Section 438 Cr.P.C. (Section 482 BNSS) was inserted in the Code in the year 1973. It is a procedural provision which is concerned with the personal liberty of an individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail.

(ii) Since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when not imposed by the legislature. An over-generous infusion of constraints and conditions which are not to be found in Section 438, can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions.

(iii) If the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a

direction for the release of the applicant on bail in the event of his arrest, would generally be made. On other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order should not be made.

(iv) There are numerous considerations, the combined effect of which must weigh with the Court while granting or rejecting the prayer for anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and the larger interests of the public or the State are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail.

(v) Circumstances may justify grant of anticipatory bail even in cases involving serious charges such as criminal breach of trust for which the maximum punishment provided is imprisonment for life. The severity of the punishment prescribed for an offence cannot be the decisive factor.

(vi) An order of anticipatory bail does not in any way, directly or indirectly, take away from the police their right to investigate into charges made or to be made against the person released on bail. While granting relief under Section 438 (1), appropriate conditions may be imposed under Section 438 (2) so as to ensure an uninterrupted investigation.

(vii) There is no hard and fast rule that in serious cases like economic offences involving corruption at the higher rungs of the executive and political power, the discretion under Section 438 Cr.P.C should not be exercised. It is not possible for the Court to assess the blatantness of the corruption at the stage of anticipatory bail.

(viii) It cannot be held that anticipatory bail cannot be granted unless it is alleged and shown that the proposed accusations are *mala fide*. One cannot conclude that the power under Section 438 Cr.P.C must be exercised in 'exceptional case only' merely because it is of an extraordinary character.

(ix) In short, the Courts should strike a balance between an individual's right to personal freedom and the investigational rights of the police.

The above principles of law were enunciated by a Constitution Bench of the Hon'ble Supreme Court in the case of ***Shri Gurbaksh Singh Sibbia & Ors. v. State of Punjab, reported at (1980) 2 SCC 565.***

9. I would also like to refer to the Hon'ble Apex Court's decision in the case of ***Siddharam Satlingappa Mhetre v. State Of Maharashtra & Ors., reported at (2011) 1 SCC 694*** wherein it was observed, *inter alia*, as follows:-

(i) The complaint filed against the accused needs to be thoroughly examined including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The Court should also examine

the fact whether there is any family dispute between the accused and the complainant.

(ii) The discretion to grant anticipatory bail must be exercised on the basis of the available material and the facts of a particular case. In cases where the Court is of the view that the accused has joined the investigation and is fully cooperating with the Investigating Agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage and post-conviction stage.

(iii) The following factors and parameters can be taken into consideration while dealing with anticipatory bail:-

- a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- c) The possibility of the applicant fleeing from justice;
- d) The possibility of the accused's likelihood to repeat similar or other offences.

- e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- g) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case.
- h) While considering the prayer for anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- i) The Court to consider reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;

10. Keeping the aforesaid principles in mind, let me revert to the facts of this case.

11. The case has been registered under Sections 120B/420/467/468/471 IPC. Section 420 pertains to the offence of cheating and dishonestly inducing delivery of property. Section 467 defines the offence of forgery of valuable security, will, etc. Section 468 relates to the offence of forgery for the purpose of cheating. Section 471 pertains to the offence of using as genuine a forged document or electronic record. Section 120B prescribes the punishment for criminal conspiracy.

12. I see that the maximum punishment prescribed for commission of offences under Sections of 420, 468 and 471 IPC is 7 years imprisonment. However, a person can be sentenced to imprisonment for life for commission of offence under Section 467 IPC.

13. The basic allegation against the petitioner is that of forging the *de facto* complainant's signature as surety on bail bonds. Investigation is in progress for quite some time, at least for the last 4 months. It appears that the petitioner has been cooperating with the Investigating Authorities. He has responded to notices under Section 94 BNSS (Section 91 Cr.P.C) and Section 35 BNSS (Section 41A Cr.P.C). I find that regarding the last two notices sent by the police, the petitioner has responded in writing intimating his inability to record his presence before the police since he is in Delhi, taking care of the medical needs of his unmarried sister who is suffering from blood cancer. I find such explanation to be plausible and acceptable.

14. The petitioner is a practising advocate in Alipurduar. I am told that he has been practicing from the last 22 years. Hence, he has some standing in the society. In my opinion, there is no real chance of the petitioner absconding if he is granted anticipatory bail.

15. I further find that the report of the Questioned Document Examination Bureau says that the signature of the *de facto* complainant on the concerned bail bonds is not in the handwriting of the petitioner. At this stage, this is also a relevant factor weighing in favour of the petitioner.

16. The State has not apprised me of any criminal antecedent of the petitioner. In the facts and circumstances of the case, there does not appear to be any real possibility of the petitioner repeating similar kind of offence or committing any other offence.

17. I also note that by an order dated January 29, 2025, an Hon'ble Division Bench of this Court had clarified that it will be open to the Investigating Agency to conduct custodial interrogation of the suspects of this case irrespective of their standing. However, till date the Investigating Agency has not deemed it necessary to subject the petitioner to custodial interrogation.

18. It appears that the order dated January 29, 2025, was carried to the Hon'ble Supreme Court by this petitioner by way of petition for Special Leave to Appeal (Criminal) No(S). 3709 – 3712/2025. However, the Hon'ble Supreme Court dismissed the special leave petitions, granting liberty to the petitioner to approach the High Court to seek appropriate directions/orders. The petitioner says that he has made the instant application pursuant to such liberty.

19. I also take note of the submission made on behalf of the petitioner that there are civil disputes touching property matters pending in Court between the petitioner and the *de facto* complainant. Therefore, the possibility of the *de facto* complainant lodging the present complaint to humiliate and injure the reputation of the petitioner cannot be ruled out altogether, at this stage.

20. I am conscious that a balance has to be struck between free, fair and full investigation on one hand and unjustified detention of the accused on the other hand. On an overall consideration of the facts and circumstances of the

case, material on record and the conduct of the petitioner so far, I am of the considered opinion that ends of justice will be served if I grant anticipatory bail to the petitioner on certain conditions.

21. Accordingly, in the event of arrest, the petitioner, namely, **Kausik Banik**, shall be released on bail on the following conditions:-

(i) The petitioner shall furnish a bond of Rs.50,000/- (Rupees Fifty Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the Arresting Officer and shall abide by the conditions laid down in Section 438(2) of the Code of Criminal Procedure/Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

(ii) The petitioner shall report to the Investigating Officer within the next 3 days.

(iii) The petitioner shall meet the Investigating Officer twice every week, on Tuesdays and Saturdays and as and when called for by the Investigating Officer, until further orders. The petitioner shall deposit his passport, if any, with the Investigating Officer when he goes to report to such officer within 3 days from date.

(iv) The petitioner shall not leave the State of West Bengal without prior intimation to the Investigating Officer and shall furnish sufficient particulars of his destination and the period of time for which he will be absent from the State of West Bengal.

(v) The petitioner shall attend the learned Trial Court on each and every date of hearing if and when the trial starts.

22. In the event the petitioner fails to adhere to any of the conditions stipulated hereinabove, learned trial court shall be at liberty to cancel the anticipatory bail in accordance with law without further reference to this Court.

23. The application for anticipatory bail being CRM (A) 223 of 2025 is, thus, **allowed** and disposed of.

24. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(ARIJIT BANERJEE, J.)