

16.5.2025
SL No.1
Court No.1
(tk)

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

CRM (A) 317 of 2025

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure corresponding to Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

In the matter of : **Virendar Pal Singh Sabharwal @Virendar Singh Sabberwal @Honey Singh,**
...Petitioner.

Mr. S. Chatterjee, Sr. Adv.,
Mr. S. Nag,
Mr. H. Saha Podder,

...For petitioner.

Mr. K. Acharjee,
Mr. D. Sil,

... For the State.

1. The application for anticipatory bail is canvassed on the ground that the dispute between the de facto complainant and the applicant was that of a landlord and a promoter.
2. The principal subject matter of the complaint is a registered power of attorney executed by two persons who have subsequently claimed in a 17 page complaint that they did not have the authority to issue the power of attorney and that there were several other legal heirs who were owners of the property.
3. It is stated in the complaint that in the absence of the other joint owners and/or legal heirs, the power of attorney could not have been executed. Payments and deposits to be made under the power of attorney have allegedly not been made by the accused.

4. There are a large number of questions that would arise against the complainant on this score itself, inter alia, as to how they executed the power of attorney in the first place.
5. Be that as it may, this Court finds a second and vital infirmity in the FIR being Bhaktinagar P.S. Case No.1155/24, dated 11.12.2024. The FIR has been registered under sections 316(2)/318(4)/351(2)/61(2) of the BNS.
6. Admittedly, a charge of criminal breach of trust cannot co-exist with a charge of cheating. Reference in this regard is made to the decision of the Hon'ble Supreme Court in the case of **Delhi Race Club (1940) Limited and Others -vs- State of Uttar Pradesh and Another**, reported in **(2024) 10 SCC 690**, particularly paragraph 38 thereof.
7. Counsel for the State, however, relies upon an order passed by this Court in CRM(A) No.566 of 2024, dated August 20, 2024. It is submitted, based on the above order that since the applicant has defaulted response to three several notices under section 41B of the CrPC equivalent to 35(3) of the BNSS, therefore, the application for anticipatory bail should not be entertained.
8. There is a distinction between the facts of the said decision dated August 20, 2024(supra) and the instant case.
9. The applicant is one of the promoters who is permanently residing within the jurisdiction of Siliguri Police Station. It is unlikely that he will escape leaving behind all his assets and properties.

10. The explanation given by the learned counsel for the applicant that his client is not responding to the notice under section 35(3) while is prima facie flimsy, this Court is concerned with compelling his appearance before the Investigating Officer.
11. The dispute between the parties, on a perusal of the 17 page complaint and the power of attorney, appears to be substantially civil in nature.
12. In the above circumstances, the applicant is entitled to anticipatory bail.
13. In the event of arrest, the applicant shall be released on a bond of Rs.,2 lakhs and two sureties of the same amount, one of whom should be local.
14. The applicant shall not leave the jurisdiction of the Siliguri and Bhaktinagar Police Stations without the express consent in writing of the Investigating Officer.
15. The applicant shall attend the IO at the Bhaktinagar Police Station as and when summoned and furnish all documents to the IO and fully cooperate without demur in the investigation.
16. It is made clear that in default of any of the aforesaid conditions, the bail granted to the applicant shall stand automatically cancelled and the applicant shall be taken into custody without any further reference to this Court.
17. This order is subject to the conditions laid down in sub-section (2) of section 438 of the Code of Criminal Procedure corresponding to section 482(2) of the BNSS, 2023.
18. Let the Case Diary be returned.

19. With the aforesaid directions, CRM(A)/317/2025 stands disposed of.
20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)