

04.09.2025
SL No.35-36
Ct. No.03
Sudipta

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

CRR 248 of 2025

**Kunal Tamang & Anr.
Vs.
The State of West Bengal & Anr.**

With

CRM (A) 459 of 2025

**Kunal Tamang @ Suman Tamang @ Lama & Anr.
Vs.
The State of West Bengal**

In Re: An application for Anticipatory Bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Sadar Police Station Case No. 213 of 2017 dated 13.10.2017 under Sections 353 / 120B / 307 / 302 of the IPC read with Sections 25 / 25(1)(A) / 27 / 35 of the Arms Act and 3/ 4 of Explosive Substance Act.

For the Petitioner :

Mr. Rajdeep Majumder, Sr. Adv. (via VC)
Mr. Regean Lama
Mr. Debabrata Rai
Mr. Sanjeev Kr. Gupta
Ms. Nevidita Lama
Mr. Pritam Roy
Ms. Nancy Gurung

.....Advocates

For the State :

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Arjun Chowdhury

.....Advocates

In Re: CRR 248 of 2025

1. Present petition has been filed challenging the order dated 1st September, 2018 and 4th September, 2018 in Sadar Police Station Case no. 213 of 2017 dated 13th October, 2017 under Sections 353 / 120B / 307 / 302 of the IPC read with Sections 25 / 25(1)(A) / 27 / 35 of the Arms Act and 3/4 of Explosive Substance Act. Vide the impugned order learned Chief Judicial Magistrate, Darjeeling, issued the proclamation under Section 82 Cr.P.C. against the petitioners.
2. Learned Senior Counsel for the petitioners submits that the impugned orders are liable to be set aside as the same are clearly in violation of Section 82 of the Criminal Procedure Code, 1973. Learned Senior Counsel further submits that there is nothing on record to suggest that the learned Chief Judicial Magistrate had applied his mind before issuing the warrant of proclamation under Section 82 of the Cr.P.C.
3. Learned counsel for the State has vehemently opposed the petition. Learned counsel submits that the present case is of 2017 and the impugned orders were passed on 1st September, 2018 and 4th September, 2018. Learned counsel for the State further submits that the

Investigating Officer had conducted several raids to arrest the accused persons but they were absconding. Learned counsel further states that present order was passed after around 1 ½ years of the registration of the FIR, therefore, the Learned CJM must have considered that the petitioners are intentionally absconding.

4. Learned Chief Judicial Magistrate upon request of the Investigating Officer issued the proclamation under Section 82 Cr.P.C. Learned Counsel submits that the facts and circumstances itself shows that there were enough reasons to believe that the petitioners were absconding for avoiding their arrest. Learned counsel submits that merely on the technicalities the impugned orders may not be set aside.
5. Section 82 of the Cr.P.C. provides as under :

“82. Proclamation for person absconding. –

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.....”

6. Bare perusal of Section 82 Cr.P.C. makes it clear that before issuing the proclamation under Section 82 Cr.P.C., the Court must have reason to belief that the person against whom said proclamation is being issued has absconded or concealing himself on account of which warrant could not be executed. The law provides that only after such reason to believe the Court may publish a written proclamation requiring the person to appear at a specified place and specified time not less than thirty days from the date of publishing such proclamation. The process of issuing the proclamation has been provided under Section 82(2) of the Cr.P.C.

7. Thus, before issuing the proclamation under Section 82 Cr.P.C. the Court must follow the following procedure.

(i) That there is material on record that the person against whom the proclamation is being issued has absconded or concealing himself;

(ii) On account of such conduct of the accused, warrant could not be executed; and

(iii) The Court had reason to believe that the person is absconding or concealing himself.

8. Even the law provides that the Court may take evidence regarding this. The safeguard provided in the law are in the form of principles of natural justice. The legislature and its wisdom has thought it pertinent that the proclamation should not be issued against the person merely at the request of the Investigating Officer. Issuance of a proclamation has serious consequences as this expose such person for arrest at any point of time. Thus, before issuance of proclamation there are certain procedural safeguards, which are to be followed mandatorily. Whether such procedural safeguards have been followed or not must also necessarily reflect in the order vide which the proclamation is being issued. The reasons in the judicial orders are its lifeline. In the absence of the reasons explained in the order the accused or the superior courts may not be able to find out that whether the procedural safeguards were followed or not. The Court cannot presume anything in the absence of any record. The relevant part of the order dated 1st September, 2018 is reproduced hereunder:

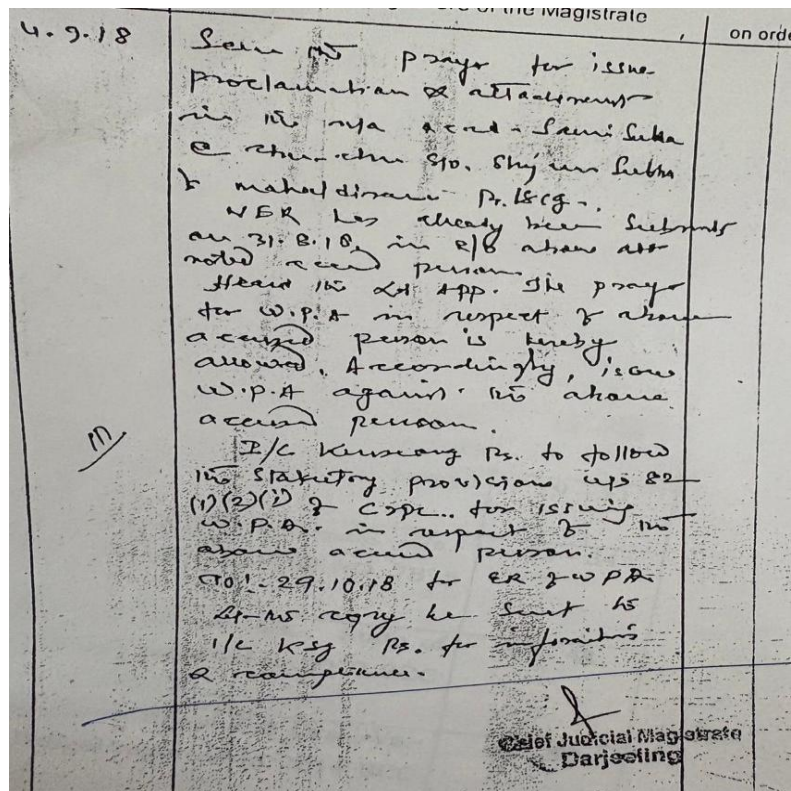
“....Seen the prayer of issuing W.P.A. in respect of accused persons Pritam Thapa and Kunal Tamang.

Heard the Ld. A.P.P. The prayer for W.P.A. in respect of accused Pritam Thapa and Kunal Tamang is hereby

allowed. Accordingly, issue W.P.A. against the above two accused persons.

The I.C., Birpara P.S., Aliporeduar to follow the statutory provisions u/s 82(1) (2) (i) of Cr.P.C. for issuing W.P.A. in respect of the accused persons namely Pritam Thapa and Kunal Tamang.”

9. The relevant part of the order dated 4th September, 2018 is set out hereunder:



10. Perusal of both the orders indicates that the learned Chief Judicial Magistrate seems to have not followed the procedural safeguards. There is nothing on the record to suggest that the petitioners were absconding or concealing themselves and the Court had reason to believe for the issuance of the proclamation under Section 82 of the Cr.P.C. There is also nothing on the record to suggest that the warrant issued could not be executed against the petitioners.

11. In view of the above observations, the impugned orders issuing the proclamation under Section 82 Cr.P.C. cannot sustain in the eyes of law.
12. Hence, the impugned orders of issuing the proclamation are set aside.
13. According the present revisional application stands disposed of.

In Re : CRM (A) 459 of 2025

1. Petitioners have moved an application for anticipatory bail.
2. Learned Senior Counsel for the petitioners submits that the petitioners were not originally named in the FIR and their names appeared only in the second chargesheet. Learned Senior Counsel submits that only material against the accused persons is that they were available on the location as per the CDR where main accused Biman Gurung was present. Learned senior counsel submits that Bimal Gurung was admitted to anticipatory bail in CRM (A) 864 of 2024 dated 30th January, 2025.
3. Learned counsel for the State has opposed the bail application for pre-arrest on the ground that as per

electronic evidence collected by the investigating agencies, the accused persons were present at the scene of offence. Learned counsel for the State has also filed a report of Sri Prabir Dutta, Inspector of Police, Darjeeling DD, CID, West Bengal. Let it be taken on record. Learned counsel for the State submits that as per investigation the present petitioners along with co-accused fled away from the scene taking huge amount of fire arms and explosive ammunition etc. and they had also open fired event at police through the fire arms. Learned counsel submits that the names of the petitioners have duly appeared in the statements of the witnesses recorded by the police and under Section 164 of the Cr.P.C. Learned counsel submits that CDR shows that accused Samir Subba @ Chuchu was in contact with other accused persons. Similarly, name of Kunal Tamang @ Suman Tamang @ Lama has appeared in multiple witness statements recorded under Section 161 Cr.P.C.

4. It is an admitted fact that the names of the present petitioners was not appearing in the FIR. Their names found placed only in the second chargesheet. Primarily, the only evidence against the petitioners as canvassed by the State is in the form of electronic evidence i.e. they were present along with the main

accused Bimal Gurung at the scene of crime and they were in constant touch with each other.

5. The State has also opposed the anticipatory bail application on the ground that their names appeared in the statement of the witnesses recorded 161 and 164 Cr.P.C.
6. It is a settled proposition that the discretion of anticipatory bail is to be exercised with great circumspection, but at the same time the Court has to ensure that the sword of arrest may not be used only to harass the people.
7. It is pertinent to mention here that the Co-ordinate Bench of this Court while granting anticipatory bail to the main accused Bimal Gurung, inter alia, held as follows:

“8. Facts transpiring from the aforesaid charge-sheets show there was a skirmish between the police personnel and a group of individuals including the petitioner. One of the police personnel SI Amitava Malik suffered gunshot injury and died. Taking note of the omission of the petitioner in the initial chargesheet and the generic manner in which he has been cited as an accused with others in the supplementary charge-sheet (without charging him for the offence of murder simplicitor) lead to the irresistible impression that the investigating agency, presumably in the backdrop of group violence resulting in death, was not prima satisfied with the sole uncorroborated version of the complainant with regard to the principal role of the petitioner in the murder. If the principal role of the petitioner is discounted, what remains are general allegations with

regard his presence at the place of occurrence and running away from the spot after seeing police attack on the gang. It may not be out of place to bear in mind the petitioner was leading a political agitation against the ruling political outfit in the State. Possibility of embellishing petitioner's role in the crime for political reasons cannot be also ruled out. 9. It is also significant to note that subsequently State has withdrawn some of the criminal cases against the petitioner. No cogent rational for withdrawing some of the cases while pursuing others has been articulated before us.

10. We are conscious petitioner has been accused of conspiracy to commit murder a police officer which is a very grave offence. However, as discussed earlier principal role of the petitioner in the murder appears to be based on uncorroborated version of the complainant and in the initial charge-sheet he was not named as an accused. Instead of offering a cogent explanation for such omission, prosecution seeks to gloss over this fact by offering a flimsy and patently preposterous explanation which is difficult for us to digest.

11. Prayer for pre-arrest bail in serious crimes like murder must be considered with due circumspection. However, when the stance of investigating agency defies logic and gives an impression of being motivated by ulterior considerations, it is the duty of the Court to ensure the liberty of the citizen is not whittled away under the guise of a motivated investigation and prosecution. State appears to have blown hot and cold in respect of the petitioner. In the first instance, investigating agency notwithstanding clear and unequivocal allegation against the petitioner did not cite him as an accused in the initial chargesheet. Secondly, though it is contended petitioner had absconded and warrant of arrest is pending, no explanation is forthcoming why the warrant was not executed in spite of the petitioner appearing in other criminal cases and being available to the investigating agency."

8. It cannot be disputed that the role of the present petitioners is no way graver than Bimal Gurung. The

Co-ordinate Bench of this Court has taken a wholesome view in its order dated 30th January, 2025. Any further discussion on the merits of the case may prejudice either of the parties.

9. Thus, taking into account the entire facts and circumstances, this Court considers that the petitioners are entitled to anticipatory bail.

10. Accordingly, the prayer for anticipatory bail is allowed.

11. In the event of arrest, the petitioners be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand) each with two sureties of like amount each, one of whom must be local, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438 (2) of the Cr.P.C., 1973 corresponding to Section 482(2) of the BNSS, 2023 and on further condition that the petitioners shall not threaten or intimidate or tamper with the witnesses and the petitioners shall join and cooperate with the investigation as and when directed by the Investigating Officer and the petitioners shall not enter into the jurisdiction of Sadar Police Station, Darjeeling, except for meeting the Investigating Officer as well as attending the court proceedings.

12. CRM (A) 459 of 2025 is disposed of.

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

(Dinesh Kumar Sharma, J.)