

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

17.06.2025.
Sl. No. 13
Ct.No. 4.
sdas
(Allowed)

C.R.M.(M) 136 of 2025

In Re:- An application for bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 439 of the Code of Criminal Procedure in connection with NJP P.S. Case No. 1131 of 2024 dated 01.11.2024 under Sections 308(4)/103/3(5) of the BNS, 2023 corresponding to Sections 387/302/34 of the Indian Penal Code.

In the matter of : Md. Hafiz & Anr.

.... petitioners.

Mr. Saikat Chatterjee
Ms. Purbasha Sarkar
Mr. Karan Paswan

...for the petitioners.

Mr. Kallol Acharjee
Mr. Chattu Roy

....for the State.

Mr. Debajit Kundu

.... for de facto complainant

This application has been preferred under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, BNSS) corresponding to Section 439 of the Code of Criminal Procedure in connection with NJP P.S. Case No. 1131 of 2024 dated 01.11.2024 under Sections 308(4)/103/3(5) of the BNS, 2023 corresponding to Sections 387/302/34 of the Indian Penal Code.

Mr. Chatterjee, learned advocate appearing for the petitioners, submits that the main allegation is against one Md. Samsad, who is currently in custody. He further submits that the petitioners are young boys, aged 21 and 23 years respectively, and that both have been in custody for the past 218 days. He also submits that in the

present case, the incident allegedly occurred on 1st November, 2024. The autopsy of the deceased was conducted on 2nd November, 2024, wherein it was opined that the victim had died as a result of injuries sustained approximately 5 to 7 days prior to the post-mortem examination.

He claims that the prosecution case is riddled with several defects. According to him, the present petitioners have been falsely implicated in the case and are currently in custody. He further submits that although the charge-sheet was filed on 23rd January, 2025, no copy has yet been supplied to the petitioners. It is also submitted that the other accused persons are still absconding, and only a warrant of arrest against them has been issued. He contends that there is no likelihood of an early conclusion of the trial. He further submits that in the present case, the grounds of arrest have not been communicated to the petitioners. In support of his submissions, he relies upon the following decisions:

1. *Prabir Purokayastha vs. State (NCT of Delhi)*, reported in (2024) 8 SCC 254.
2. *Pankaj Bansal vs. Union of India and others*, reported in (2024) 7 SCC 576.
3. *Vihaan Kumar vs. State of Haryana and another*, reported in (2025) SCC OnLine SC 2659.
4. *Kasireddy Upendar Reddy vs. State of Andhra Pradesh and others*, reported in 2025 SCC OnLine 1228 and
5. *Directorate of Enforcement vs. Subhash Sharma*, reported in 2025 SCC OnLine SC 240.

Mr. Kundu, learned advocate representing the de facto complainant, submits that the persons, who are yet to be arrested by the police, have been continuously threatening the witnesses. He asserts that if the present petitioners are released on bail, there is every possibility that they may tamper with the evidence and cause obstruction to the course of justice.

Mr. Acharjee, learned advocate representing the State, produces the case diary. Relying on the materials available in the case diary, he opposes the prayer for bail. He submits that since a prima facie case has been established against the present petitioners, charge-sheet has been submitted against them and the other co-accused persons. He further submits that the grounds of arrest were orally communicated to the petitioners.

Heard the learned advocates appearing for the respective parties and perused the materials on record, including the case diary.

In the present case, the charge-sheet has been submitted, and two co-accused persons, standing on the same footing, have been enlarged on bail. There is no specific allegation against the present petitioners. Admittedly, the grounds of arrest have not been communicated to the petitioners in writing. The Hon'ble Court, in a series of judgments, has held that the right to be informed of the grounds of arrest flows from Article 22(1) of the Constitution of India, and any infringement of this fundamental right would vitiate the process of arrest and remand. The Court further held that the grounds of arrest or detention must be communicated to the detainee in writing and in a language that he understands. Mere verbal communication of the grounds would not suffice, and such a procedure would amount to

a violation of the constitutional mandate under Article 22(1). If the grounds of arrest are not communicated to the petitioners, such omission will also offend the provisions of Section 47 of the BNSS. The Hon'ble Supreme Court further held that if the grounds of arrest are not communicated to the detinue at the time of his arrest, the same shall render the arrest illegal.

Therefore, taking note of these facts, I am of the view that the present petitioners may be enlarged on bail on those grounds.

In view of the above, the petitioners, viz. Md. Hafiz and Md. Sarfaraj @ Md. Sarfaraj @ Md. Sarfaraj Alam, shall be released on bail of Rs. 10,000/- each, with two sureties of Rs. 5,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Jalpaiguri, subject to the condition that they shall appear before the trial court on every date of hearing until further orders, and shall not intimidate witnesses or tamper with evidence in any manner whatsoever.

In the event the petitioners violate any of the conditions enumerated in the preceding paragraph, the learned trial court shall have the authority to cancel their bail in accordance with law, without any further reference to this Court.

This application for bail is, thus, disposed of.

(Partha Sarathi Chatterjee, J.)

