

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

19.06.2025.
Sl. No. 6
Ct.No. 4.
sdas
(Allowed)

C.R.M.(M) 145 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 Kurseong Police
Station Case No. 41 of 2024 dated 06.04.2024 under Sections
364/376/511/302/ 201/34 of the Indian Penal Code.

In Re : Gofur Alam @ Gafur Alam @ Gafur & Anr.
.... petitioners.

Mr. Sourav Chatterjee, Sr. Adv.
Mr. Somraj Paul
Mr. Subham Ghosh
.....for the petitioners.

Mr. Aditi Shankar Chakraborty, learned APP
Dr. Arjun Chowdhury
....for the State.

Mr. Deborshi Dhar
Ms. Taniya Bhowmik
.... for the de facto complainant

This application has been preferred under Section 483 of
the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short BNSS)
corresponding to Section 439 of the Code of Criminal Procedure in
connection with Kurseong Police Station Case No. 41 of 2024 dated
06.04.2024 under Sections 364/376/511/302/ 201/34 of the Indian
Penal Code.

Mr. Chatterjee, the learned Senior Advocate appearing for
the petitioners, submits that a co-accused, who stands on an

identical footing, has already been granted bail by a Co-ordinate Bench of this Court vide order dated 10th April, 2025. He further submits that the present petitioners have been in custody for the past 13 months. It is also pointed out that the charge-sheet in the present case cites 34 witnesses. In such circumstances, he contends that there is no likelihood of an early conclusion of the trial.

Drawing my attention to certain observations made by the Co-ordinate Bench in its order dated 10th April, 2025, Mr. Chatterjee submits that the prosecution has sought to connect the accused persons with the alleged offence primarily on the basis of certain seizure lists. He points out that, according to the said seizure lists, certain incriminating materials, including some items of clothing, were allegedly recovered from public places. It is further submitted that a vehicle purportedly used in the commission of the offence was recovered from the possession of the co-accused, Adil Alam, who has already been granted bail. He contends that continued detention of the present petitioners would amount to pre-trial punishment. Accordingly, he prays that the petitioners be enlarged on bail.

Dr. Chowdhury, the learned Advocate appearing for the State, produces the case diary and, relying on the materials contained therein, opposes the prayer for bail. He submits that there are sufficient materials available in the case diary implicating the present petitioners. However, in his usual fairness, he concedes that the present petitioners stand on the same footing as the co-accused, Adil Alam. He has pointed out that the order granting bail

to the said co-accused, namely Adil Alam, has been challenged by preferring an application seeking cancellation of the bail, which is presently pending final adjudication.

In reply, Mr. Chatterjee submits that the *de-facto* complainant has challenged the legality and propriety of the order granting bail to the accused, namely Adil Alam, by filing an application for cancellation of bail before the same Court. He contends that, as per the settled principles of law laid down in a catena of judgments, such an application is maintainable only before a superior court, and not before the same court that granted the bail. He further submits that, in view of this legal position, there is every likelihood that the said application for cancellation of bail will be dismissed on this ground alone.

Ms. Bhowmik, learned Advocate representing the *de facto* complainant, vehemently opposes such prayer for bail.

Heard the learned Advocates for the respective parties and perused the case diary as well as other materials available on record. It is not in dispute that charge-sheet has already been submitted in the present case, and the co-accused, Adil Alam, who stands on the same footing as the present petitioners, has been granted bail. A total of 34 witnesses have been cited in the charge-sheet. In such circumstances, there appears to be no likelihood of an early conclusion of the trial.

Therefore, having regard to the aforesaid facts, including the period of detention already undergone by the petitioners and considering the nature and extent of their alleged complicity in the

present case, I am of the considered view that their continued detention would not serve any useful purpose.

In view of the above, the petitioners viz. 1) Gofur Alam @ Gafur Alam @ Gafur and 2) Sarfaraz @ Sarfaraj @ Sanfaraz 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 Additional District & Sessions Judge, 1st Court at Kurseong, Darjeeling, subject to the condition that they shall appear before the trial court on every date of hearing until further orders, shall not intimidate witnesses or tamper with evidence in any manner whatsoever, and on the further condition that they shall not leave the territorial jurisdiction of Darjeeling District, and that they shall furnish the address or addresses at which they intend to reside after their release on bail to the Officer-in-Charge of Kurseong Police Station as well as to the learned Trial Court.

In the event, the petitioners violate any of the conditions enumerated in the preceding paragraph without any justifiable cause, 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, allowed and disposed of.

(Partha Sarathi Chatterjee, J.)

