26.11.2025
Item no.13
Court No.3
ss
(Rejected)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CRIMINAL MISCELLANEOUS JURISDICTION

CRM (A) 790 of 2025

In Re:- An application for anticipatory bail under Section 482 of BNSS, 2023/438 of the Code of Criminal Procedure, 1973 in connection with Pradhan Nagar P.S. Case No.581 of 2025 dated 22.08.2025 under Section 316(2)/318(4)/336(3)/338/61(2) of the Bharatiya Nyaya Sanhita, 2023.

In the matter of : Sandip Mahato
… Petitioner.

Mr. Hillol Saha Podder
…for the Petitioner.

Mr. Nilay Chakraborty, Ld. APP
Dr. Arjun Chowdhury (virtual mode)
…..for the State.

1. Learned Advocate for the petitioner submits that the precise allegation in the FIR is that the complainant was duped by the accused persons for making payment of Rs.35 lacs on the promise that they will arrange for necessary license in favour of the complainant for opening of a petrol pump. There are also allegations that the acceptance of letter which has been issued to the complainant on the letterhead of Indian Oil Corporation Limited is fabricated. Be that as it may, a part of the amount that has been transferred by the complainant has been repaid to the tune of Rs.16 lacs. Further, the alleged amount has been transferred to the account of one Pampi Das, who is the wife of

accused no.1, Amit Sharma. There are no such money transfer to the account of this petitioner. Moreover, the allegations of criminal breach of trust and cheating cannot co-exist. In support of his contention he relies on the decision of the Hon'ble Supreme court in the case of ***Delhi Race Club (1940) Limited and others –versus- State of Uttar Pradesh and another,*** reported in ***(2024) 10 SCC 690.*** Furthermore, there is unexplained considerable delay in lodgement of the FIR and therefore, it is *sine qua non* to hold preliminary enquiry in such circumstances prior to initiation of the case. To buttress his contention, he relies on the decision of the Hon'ble Supreme Court in the case of ***Lalita Kumari –versus- Government of Uttar Pradesh and others,*** reported in ***(2014) 2 SCC 1.*** He seeks for grant of anticipatory bail in favour of the petitioner.

2. Learned Advocate for the State appearing through virtual mode, opposing such prayer for anticipatory bail, submits that the petitioner played an active role in alluring the complainant to part with an amount of Rs.35 lacs on the pretext of arranging requisite license in favour of the complainant for opening of a petrol pump. Acceptance letter, approval letter for new dealership and personal hearing and new dealership agreement on the letterhead of Indian Oil Corporation was handed over to the complainant. Since no further steps were taken, the complainant approached the Indian Oil Corporation Limited and upon verification the complainant came to learn that those letters are all fake and fabricated. Though it is

settled proposition that offences of criminal breach of trust and cheating cannot co-exist but the investigation is under progress and charge-sheet is yet to be filed under appropriate provisions. The materials collected during investigation primarily show that the documents-in-question have been fabricated. The delay was due to the fact that the complainant, being a layman, waited for repayment of the entire amount. However, such delay *per se* cannot make the prosecution case bad in law for the reasons that forgery of documents is palpable on the face of the record. He seeks for dismissal of the application for anticipatory bail.

3. Perused the case diary and the materials on record.

4. As per the verification report of the Indian Oil Corporation Limited dated 3rd September, 2025 it is found that the documents-in-question namely the Acceptance Letter dated 27th January, 2021, Approval Letter dated 8th February, 2021 and Personal Agreement and new dealership agreement dated 20th August, 2021, which were sought to be verified, have been informed by the authority concerned to be not genuine and has not been issued from the office of the Indian Oil Corporation Limited. The allegation as revealed in the written complaint is that this petitioner along with other accused persons has assured the complainant that they would arrange for license in favour of the complainant for opening of a petrol pump and an amount of Rs.35 lacs has been transferred to the account of one Pampi Das by the complainant. Admittedly, there is

repayment of Rs.16 lacs. Be that as it may, the criminal offence of such a nature cannot be eliminated and put an end on the ground that certain portion has been repaid.

5. In view of the decision of Hon'ble Supreme Court passed in *Delhi Race Club (1940) Limited (supra)*, it is no more *res integra* that offences of criminal breach of trust and cheating cannot co-exist simultaneously. Be that as it may, the investigation is under progress and charge sheet is yet to be filed in final form. Therefore, the proposition of the Hon'ble Supreme Court as above may not be applicable at this stage of investigation.

6. Relying on the decision of Hon'ble Supreme Court in *Lalita Kumari (supra)* it has been strenuously argued on behalf of the petitioner since there is considerable delay, hence it was necessary for the investigating agency to hold a preliminary enquiry prior to initiation of the case. In order to deal with such argument, it would be apposite to reproduce paragraph no.120 of the decision in *Lalita Kumari (supra)* as hereunder:

> *"**120.** In view of the aforesaid discussion, we hold:*
>
> ***120.1.** The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
>
> ***120.2.** If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
>
> ***120.3.** If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*
>
> ***120.4.** The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*
>
> ***120.5.** The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

> ***120.6.*** *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*
>
> *(a) Matrimonial disputes/family disputes*
> *(b) Commercial offences*
> *(c) Medical negligence cases*
> *(d) Corruption cases*
> *(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*
>
> *The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."*

7. It manifest from the aforesaid proposition that the registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. There cannot be any doubt that the written complaint discloses cognizable offence. Therefore, the initiation of the FIR cannot be called in question on such ground of delay. Moreso, delay *per se* cannot make the case of the prosecution bad.

8. Considering the materials as above and the nature and gravity of the offence, I am not inclined to grant anticipatory bail in favour of the petitioners.

9. It is made clear that the observation made hereinabove is only for the disposal of this application.

10. Accordingly, the prayer for anticipatory bail of the petitioners is rejected.

11. The application being ***CRM (A) 790 of 2025*** stands dismissed.

(**Bivas Pattanayak, J**.)