

25.11.2025
Item no.56
Court No.3
ss
(Allowed)

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

CRM (A) 820 of 2025

In Re:- An application for anticipatory bail under Section 482 of BNSS in connection with Matigara Police Station Case No.615/25 dated 19.09.2025 under Sections 316(2)/318(4)/351(2)/324(2)/329(3)/303(2)/61(2) of the Bhartiya Nyaya Sanhita, 2023 (corresponding to PTN No.WBDJOEP004699 of 2025) presently pending before the learned Additional Chief Judicial Magistrate at Siliguri.

In the matter of : **Roma Saibo @ Rama Shaibo & ors.**
... Petitioners.

Mr. Sourav Chatterjee, Sr. Adv.
Mr. Karan Dudhwewala
Mr. Debanjan Das
Mr. Samrat Acharya

... for the petitioners

Mr. Aditi Shankar Chakraborty, (virtual mode)
Mr. Abhijit Sarkar
Ms. Sukanya Adhikary.

.....for the State.

Mr. Subham Ghosh
Mr. Mayank Roy

... for the *de facto* complainant

1. Learned Senior Advocate appearing on behalf of the petitioners at the outset, submit that the dispute arises in respect of an agreement for sale. The petitioners are not part of the agreement for sale. The petitioner no.1 is the cousin sister of Bimal Chandra Roy, who is one of the parties to the agreement for sale. The only allegation as made out in the FIR against the petitioners is attempt to theft. The petitioner no.1 is the

adjoining land owner and she has been named in the FIR. The petitioner nos.2 to 16 have been served with a notice under Section 35(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (*in short, BNSS*). There are no such ingredients to implicate these petitioners in the alleged offences. He seeks for grant of anticipatory bail to the petitioners.

2. Learned Advocate for the State, opposing such prayer for anticipatory bail, submits that though the complainant has paid a considerable amount of money, the land-in-question has not been registered in his favour. The petitioners tried to remove articles from the land in possession of the complainant. He seeks for dismissal of the application for grant of anticipatory bail.
3. Learned Advocate for the *de facto* complainant, opposing prayer for anticipatory bail submits that the petitioner no.1 along with other petitioners accompanied the principal accused Bimal Chandra Roy to the land in possession of the complainant and have removed valuable articles. There is constant threat from the side of the petitioners to grab the land in possession of the complainant by hook or crook. The complainant has been deceived by the vendors. He also indicates that the application under Section 438 Cr.P.C. has been affirmed by the nephew of the petitioner no.1, hence such application is not maintainable in view of the fact that as per provisions of Section 438 Cr.P.C., the person, who has reason to believe that he may be arrested,

may file application and none else. In support of his contention he relies on the decision of this Hon'ble Court passed ***In the matter of: Bonneswar Dutta and others***, reported in **1998 SCC OnLine Cal 13**. He seeks for dismissal of the application for grant of anticipatory bail.

4. Perused the case diary and the materials on record.
5. At the very beginning, let me examine whether the instant application for anticipatory bail can be entertained in its present form or not.
6. It has been strenuously argued on behalf of the *de facto* complainant relying on *Bonneswar Dutta (supra)* that the instant application for anticipatory bail is not maintainable since it has not been filed by the petitioners themselves. In *Bonneswar Dutta (supra)*, this Court has observed as follows:

“23. After hearing Mr. Balai Chandra Roy, Mr. Milan Kumar Mukherjee and Mr. Kazi Safiullah, learned Public Prosecutor and other learned Advocates and after considering the various case laws and the provisions of Article 20(3) of the Constitution of India and the provisions of the Oaths Act and the Criminal Procedure Code we are clearly of the view that there is no bar for the applicants to affirm an affidavit for filing an application under Section 438 of the Code of Criminal Procedure and that mere affirmation of an affidavit in support of the application does not amount to any testimonial compulsion and that the same also does not come within the purview of the provisions of Section 4(2) of the Oaths Act which is only confined to criminal proceedings; or in other words in course of trial and not in course of the investigation. In that view of the matter the tadbirkar or an agent cannot affirm an affidavit in an application for Anticipatory Bail and in each and every case the applicant has to affirm it either before the Oath Commissioner of this Court or before any Magistrate who is competent to administer an oath and in case of genuine difficulty the same could be affirmed by an agent duly authorised by the applicant in accordance with law as provided in the Civil Procedure Code. We also hold that this Court and no other Court in this State can entertain an application for Anticipatory Bail if it is affirmed by a mere tadbirkar and no such application can be entertained unless it is supported by an affidavit by the applicant or by his duly authorised agent in accordance with law and not by the tadbirkar or a middleman. Since this practice, which in our view, is contrary to law is continuing for a long time, we do not propose to reject such

applications which are in the list and pending before this Court and that those cases can be taken up only after a supporting affidavit is affirmed by the applicant or by the persons who are duly authorised by the applicant in accordance with law two weeks from today.”

7. In light of the aforesaid proposition since the application is supported by an affidavit affirmed by the nephew of the petitioner No.1 who states to have been duly authorised by the petitioners, hence the application is entertainable. Therefore, the argument of non-maintainability of application does not stand to reason.
8. Now reverting to the fact of this case, an FIR has been initiated over a contractual dispute in relation to an agreement for sale executed between the complainant and accused nos.1 and 2. None of the petitioners herein are parties to said agreement. The only allegation against the petitioners as is revealing from the FIR is of attempt to commit the offence of theft. In view of the above, I am inclined to grant the prayer of the petitioners for anticipatory bail.
9. Accordingly, in the event of arrest the petitioners namely **(1) Roma Saibo @ Rama Shaibo, (2) Mithun Saibo @ Mithun Saibya, (3) Suraj Saibo @ Suraj Saibya, (4) Ajay Saibo @ Ajay Saibya, (5) Raj Kumar Roy, (6) Pappu Singha, (7) Tapan Barman @ Pania, (8) Manu Roy, (9) Dipak Roy, (10) Sumanta Roy, (11) Sanjay Singha @ Kachra, (12) Sharmila Singha, (13) Atul Singha @ Samir Singha, (14) Rohit Roy, (15) Biplap Barman and (16) Shyamal Roy** shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like

amount each, to the satisfaction of the arresting officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 corresponding to Section 482(2) of BNSS and shall attend the court on the date fixed for appearance. The petitioners shall cooperate with the Investigating Officer.

10. In default the jurisdictional Court shall pass appropriate order to secure the presence of the petitioners in Court including cancelling the anticipatory bail granted without further reference to this Court.
11. This application for anticipatory bail is allowed.
12. **CRM (A) 820 of 2025** is, thus, disposed of.

(Bivas Pattanayak, J.)