

30.01.2025.
Sl. No.13.
Ct. No. 1
SG
(Allowed)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri

C. R. M. (A) 864 of 2024

In Re: An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Darjeeling Sadar Police Station Case No. 213 of 2017 dated 13.10.2017 under Sections 353/120B/307/302 of IPC with Sections 25/25(1A)/25(1AA)/25(1B)/25(2)/27/35 of the Arms Act and Section 3/4 of the Explosive Substance Act.

And

In Re: **Bimal Gurung.**

..... Petitioner

Mr. Amalesh Ray, Sr. Adv.,
Mr. Janardan Periwai,
Mr. Deborshi Dhar,
Mr. Nigom Mittal,
Ms. Prerna Mitra.

.....for the petitioner

Mr. Aditi Shankar Chakraborty, ld. A.P.P.
Dr. Arjun Chowdhury.

.....for the State

1. Petitioner is a political personality. He contends he is a victim of political persecution. A series of criminal cases were registered against him. Subsequently, in some of the cases he was granted pre-arrest bail. Other cases were withdrawn. He has been falsely implicated in the present case. Statement of the *de facto* complainant and other witnesses were engineered to falsely implicate him. Accordingly, he prays for anticipatory bail.

2. Learned Additional Public Prosecutor contends petitioner was the leader of a political group which had resorted to violent activities. To pursue its cause they had taken refuge in Rangeet

forest with arms. When police personnel raided the hide out, petitioner shot at one police officer, namely, SI Amitava Malik who succumbed to his injuries. Petitioner was absconding and warrant of arrest is pending execution. He prays for rejection of the petition.

3. On earlier occasion this Court went through the records of the case. Present case had been registered by one Saumyajit Roy, the then IC, Darjeeling Sadar Police Station. He was a member of the raiding party. In the FIR the IC alleged petitioner and others were resorting to various violent activities. As a result, a number of cases were registered against them. They had taken refuge at Rangeet forest. When the police party approached they indiscriminately fired and fled. When they advanced, petitioner had fired at SI Amitava Malik resulting in his death.

4. Notwithstanding such accusation in the FIR we noted petitioner was not cited as an accused in the initial charge-sheet. Though in the supplementary charge-sheet petitioner is shown as an accused, no specific charge under Section 302 simplicitor had been levelled against him.

5. We also noted though petitioner was available to the investigating agency when he had surrendered in other cases, the warrant was not executed.

6. In light of the aforesaid incongruities, State was directed to clarify the following issues:-

(i) In the FIR it is alleged petitioner had fired at one SI Amitava Mullick who succumbed to his injuries. Notwithstanding such unequivocal accusation, strangely enough petitioner was not cited as an accused in the first charge sheet. Even in the subsequent charge sheet he was charged as a conspirator and not a principal offender.

(ii) State admits it has withdrawn 15 criminal cases against the petitioner under section 321 Cr.P.C. The rationale on which the cases were withdrawn vis a vis other cases which are pending against him needs to be clarified.

(iii) Order of proclamation/attachment procured against the petitioner was set aside in CRR 226 of 2024. However, warrant of arrest is still pending. It is admitted in the interregnum petitioner was granted pre-arrest bail in some cases and had appeared before the jurisdictional court and was released on bail. Given this situation, State requires to explain why inspite of petitioner being available on surrender in those cases, warrant of arrest in this case was not executed against him.

7. Today report is placed on record. The report is woefully, vague and does not effectively answer the aforesaid queries. No cogent reason for non-inclusion of the petitioner's name in the initial charge-sheet is forthcoming. It is merely stated his name was not included due to non-availability of records. This explanation is wholly untenable. Petitioner's role is glaringly portrayed in the FIR which was an accompaniment of the charge sheet. Given this situation, how can his name be omitted on the ground of non-availability of records. On the other hand, the aforesaid stance of the investigating agency discloses lack of confidence of the investigating agency in the statement of the complainant with regard to the principal role played by the petitioner in the murder. In the supplementary charge-sheet also petitioner was arrayed along with other accused and charged

under Sections 353/120B/307/302 of IPC. No separate charge under Section 302 simplicitor had been levelled against him.

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 charge-sheet 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 charge-sheet. 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.

12. Given these unexplained ambiguities, we are of the opinion the investigating agency itself is not serious in pursuing

the process against the petitioner. This prompts us to pass appropriate orders granting anticipatory bail to him.

13. Accordingly, we direct that in the event of arrest, the petitioner viz., **Bimal Gurung** be released on bail upon furnishing a bond of Rs.25,000/-, with two sureties of like amount each, to the satisfaction of the Arresting Officer and also subject to the conditions as laid down under Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023. He shall appear before the jurisdictional court and pray for regular bail within four weeks from date.

14. The application for anticipatory bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)