IN THE HIGH COURT AT CALCUTTA

CRIMINAL MISCELLANEOUS JURISDICTION

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.M.(A) 1821 Of 2025

Mamta Ajitsaria

Versus

State of West Bengal

For the petitioner	:	Mr. Sujan Chatterjee, Mr. Anirban Guha Thakurta, Mr. Rohan Bavishi. ...Advocates
For the De-facto complainant	:	Mr. Sabyasachi Banerjee Sr.Adv., Mr. Ayan Bhattacharjee Sr.Adv., Mr. Pratimpriya Dasgupta, Mr. Soumen Mohanty, Mr. Agnish Basu, Mr. Gourav Bose, Mr. Ayaan Hassan Ahmed. ...Advocates
For the State	:	Mr. Debasish Roy, Ld. P.P, Mr. Avijit Ganguly, Mr. Tirupati Mukherjee. ...Advocates.

With

C.R.M (A) 2635 of 2025

Subash Kumar Fatehpuria

Vs.

State of West Bengal

For the petitioner	:	Mr. Sourav Chatterjee, Sr. Adv. Mr. Antarikhya Basu, Mr. Sayan Mukherjee, Mr. Digvijay Singh, Ms. Dhiraj Ailari, Mr. Mayurekhhy Saha. ...Advocates
For the de-facto complainant	:	Mr. Sabyasachi Banerjee Sr.Adv Mr. Ayan Bhattacharjee Sr.Adv., Mr. Pratimpriya Dasgupta Mr. Soumen Mohanty, Mr. Agnish Basu, Mr. Gourav Bose, Mr. Ayaan Hassan Ahmed. ...Advocates
For the State	:	Mr. Debasish Roy, Ld. P.P, Mr. Avijit Ganguly, Mr. Tirupati Mukherjee. ...Advocates
Lastly heard on	:	27.02.2026
Judgment on	:	27.02.2026

JAY SENGUPTA, J:

1. These are applications for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed in connection with Bowbazar Police Station Case No.110 of 2025 dated 21.05.2025 under Sections 61(2)/318(4)/316(2)/336(2)/336(3)/338/340(2) of the Bharatiya Nyaya Sanhita, 2023. (G.R. Case No. 324 of 2025).

2. Learned counsel appearing on behalf of the petitioner in CRM (A) 1821 of 2025 submits as follows. A similarly circumstanced lady co-accused namely, Rajni Fatehpuria, who is also a guarantor like the lady petitioner herein, has been enlarged on anticipatory bail by the Hon'ble Court in SLP (Crl.) No. 9563 of 2025 vide Order dated 19.08.2024. The Hon'ble Apex Court while granting anticipatory bail to the said lady co-accused observed the following; a) that she is a guarantor, b) said Rajni Fatehpuria is not a partner of the firm which had availed the credit facility and the inflated or manipulated audit reports, and c) that the applicant, Rajni Fatehpuria is a lady. The petitioner Mamta Ajitsaria, being another lady, and satisfying the same parameters as stated in Clause (a) and (b) hereinabove, may be granted the same benefit and enlarged on pre-arrest bail by this Court. The role of the petitioner in the instant case is limited to that of a guarantor. The petitioner's liability therefore extends only to the extent of repaying the entire loan amount, including interest and penalties. Thus, the liability on the petitioner is civil in nature and the criminal liability with regard to the penal sections cannot be foisted upon the petitioner. The letter of complaint itself states that the complainant-bank being satisfied of the genuineness of the borrower-firm extended loan to it to the tune of Rs. 26,80,72,000/-vide sanction letter dated 26.07.2025 and Addendum Sanction Letter dated 03.08.2023. As regards the second set of allegations that it was deliberately hidden from the complainant that the asset that was mortgaged for securing the loan came with encumbrances, it is submitted that the same was not suppression. The letter of complaint of the complainant at para 7 itself states that at the time of sanctioning loan facilities, the complainant had discovered that the mortgaged property was partially occupied by some individuals. The complainant thereafter further enquired about the status of such occupants who were residing on the ground floor of the mortgaged property and also enquired whether the mortgaged property was rented. Therefore, before disbursing the loan, the complainant had done its due diligence, and thereafter, being satisfied of the genuineness of the transaction, disbursed the loan to the accused borrower-firm. The complainant now cannot be permitted to claim that it was unaware of the existence of encumbrances on the mortgaged property and that the same was hidden from it by the present petitioner. With regard to the third allegation against the petitioner that part of the funds was being routed by the accused through M/s. Madhuram Enterprises, of which the petitioner is the proprietor, it is submitted that from 03.07.2024 to 17.08.2024, the proprietorship concern of the petitioner received a total of Rs. 79,20,000/- from the accused borrower-firm through banking channels, and the same has been duly repaid to the borrower in due course along with an excess amount to the tune of Rs. 7,43,500/-. Therefore, no amount of money that came to the bank account of the proprietorship concern of the petitioner from the accused borrower-firm remains with the proprietorship concern.

The instant investigation is entirely based on documents, most of which are already within the custody of the investigating agency. It is pertinent to draw this Court's attention to the Proviso to Section 480 of the BNSS. The proviso to Section 480 of the BNSS mandates that when the accused before the Court is under the age of 16 years, sick or infirm or a woman, is something which is required to be taken into consideration of by the Court, while considering the prayer for bail. The first proviso, therefore, facilitates a Court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm. The beneficial aspect of Section 480 of the BNSS may also be read into Section 482 of the BNSS. The petitioner has cooperated with the investigation and there is nothing on record to show that she will not do so in the future.

3. Learned senior counsel appearing on behalf of the petitioner in CRM (A) 2635 of 2025 submits as follows. The primary consideration is the preservation of personal liberty under Article 21 of the Constitution. Custody is an exception, not the rule. The petitioner's consistent cooperation negates any flight risk or threat to society that would necessitate incarceration. The core of the dispute is a loan default, which is quintessentially a civil liability. The bank has already initiated recovery proceedings before the Debt Recovery Tribunal (DRT), confirming the civil nature. Using criminal law as a tool for debt recovery is a clear abuse of the process of the court. The petitioner has demonstrated utmost good faith and respect for the legal process. He secured a transit anticipatory bail from the Bombay High Court and complied with its condition to appear before the Kolkata police. He has visited the police station on five separate occasions

(31.07.2025, 04.08.2025, 10.08.2025, 11.08.2025, 16.08.2025), since thereafter, the investigating agency did not call him for interrogation. The police's conduct marking "dissatisfaction" without substantive questioning, directing him to return repeatedly, and finally refusing to even record his attendance on 16.08.2025. This proves the investigation is nothing, but a pretext for harassment. Their subsequent silence confirms they have no bona fide need for his custody. The pattern of the police summoning the petitioner without any meaningful interrogation, sending him from one department to another, and their vague endorsements demonstrate a mala fide intent to harass and coerce. This conduct strengthens the argument that the criminal process is being weaponized to pressurize the petitioner for a civil recovery. The FIR is vague and does not particularize the petitioner's role in the alleged preparation of false documents, lacking allegations of forgery or specific misappropriation. The case is based on documentary evidence (loan documents, financial records) already in the possession of the bank and the police. The alleged offence began in July 2023, the account was declared NPA in October 2024, but the FIR was lodged only in May 2025. This significant delay, without explanation, suggests a lack of urgency and points towards the case being a retaliatory measure rather than a genuine criminal complaint. The bank's active pursuit of recovery through the DIRT (O.A. No. 462/2025) simultaneously with the criminal prosecution reveals the bank's true intent to use the threat of arrest as leverage in a civil money dispute. The Hon'ble Supreme Court's order granting anticipatory bail to the petitioner's wife, Rajni Fatehpuria, vide order dated 19.08.2025 in SLP (Cri) No. 9563 of 2025 is a powerful precedent. The Apex Court rejected the bank's argument that her status as a family member and guarantor implied complicity. This logic applies squarely to the petitioner, undermining the prosecution's foundational theory of "quilt by association". Specifically, the bank's allegations in Paragraphs no 17-18 of the IA, which portray Rajni Fatehpuria as an "active participant," a "key link in the conspiracy, and someone with "substantial control over the operations," have been directly considered and dismissed by the Hon'ble Supreme Court. Consequently, the allegations of active participation and control, having been found insufficient to warrant the arrest of one family member, cannot logically justify the arrest of the petitioner on the same unsubstantiated grounds. The fact that the other partners did not implead the petitioner in their civil challenge (SA/142/2025) before the DRT, which strongly indicates petitioner's non-essential and non-operational role in the firm. Internal letters (12.08.2024 & 14.08.2024) show that key transactions were conducted by other accused persons without petitioner's knowledge, corroborating his claim of lack of involvement in day-to-day financial decisions. The RBI Master Direction on Fraud Risk Management requires a bank's committee to conclusively find "fraud" before reporting to the police. There is no evidence this procedure was followed. Further, the bank failed to follow the mandatory RBI procedure to declare the petitioner a "wilful defaulter." This absence is fatal to the allegation of fraudulent intent, as per established RBI guidelines. The petitioner is a 62-year-old citizen, who suffers from Myasthenia Gravis, a progressive autoimmune disorder requiring continuous medical supervision, IVIG therapy, and potential surgery (thymectomy). Incarceration would pose a severe threat to his health and well-being, a humanitarian ground that courts consistently consider. The petitioner intends to rely upon the Order dated 23.07.225 passed by the Learned Additional Chief Judicial Magistrate, 2nd Court, Calcutta in connection with the instant case thereby granting bail to co-accused Mr. Madhusudhan Ajitsaria. The said order granting bail still holds good and not yet been cancelled by any competent court of law. The Petitioner further seeks to highlight the Complainant Bank's abuse of the criminal process an arm-twisting tactic for debt recovery. The bank, presented an old security cheque for the full disputed loan amount of approximately $823 84 crores. This partnership firm cheque was deposited despite the bank's knowledge that the account was blocked, leading to its dishonor. Subsequently, the bank initiated a complaint under Section 138 of the Negotiable Instruments Act in Jaipur, leading to the issuance of bailable warrants and the petitioner's formal arrest and release on bond on 11.12.2025. The Petitioner points out that a separate Section 138 NI Act complaint for the same amount using a personal security cheque was already pending. This pattern of multiple simultaneous criminal actions clearly demonstrates that the criminal proceedings are being used solely for the recovery of the loan amount, thus strongly supporting the petitioner's prayer for anticipatory bail. Custodial interrogation is wholly unnecessary in this case because the offense, as alleged in the FIR, is primarily based on documentary evidence. The entire material, including loan documents, financial records, and the allegedly false documents, is already in the possession of the Complainant Bank (AU Small Finance Bank) and the police. There is nothing to recover from the petitioner's custody, and his presence is not required to unearth any hidden facts, as his role can be determined from the documents already seized. Furthermore, the petitioner has demonstrated utmost cooperation by joining the investigation on multiple occasions specifically five separate times-following a transit anticipatory bail order. His consistent cooperation negates any flight risk or apprehension of tampering with evidence, making incarceration a disproportionate and unjust action. The delay in filing a Police Report despite the passage of a significant amount of time since the FIR was lodged in May 2025 and the petitioner's initial joining of the investigation on July 31, 2025, is highly suspicious. The police's subsequent conduct, including marking "dissatisfaction" without substantive questioning and then refusing to record his attendance, shows a clear mala fide intent to harass and coerce the petitioner. Police's failure to summon the petitioner for interrogation after 16.08.2025, coupled with their subsequent silence, effectively confirms they have no bona fide need for his custody. The significant delay in lodging the FIR itself (alleged offense in July 2023, FIR in May 2025) suggests the case is a retaliatory measure rather than a genuine criminal complaint, further strengthening the argument that the process is being weaponized for civil recovery. So far as the petitioner Subhas Kumar Fatehpuria is concerned, it is only a case of dispute regarding a bank loan taken. Two successive banks had scrutinized the documents. There is property kept as collateral security. A proceeding is pending before the Tribunal. Moreover, the petitioner has co-operated with investigation. He is also suffering from a serious aliment.

4. Learned senior counsel appearing on behalf of the de-facto complainant submits as follows. The petitioner Mamta Ajitsaria happens to be the wife of Madhusudan Ajitsaria, who is one of the partners of the borrowing firm and a prime accused in the instant case. The husband of the said petitioner was earlier arrested by the investigating agency and was in custody for a period of about 30 days. The said petitioner, though is not a partner of the borrowing firm, but has acted in concert with her husband and the other partner namely, Subhash Kumar Fatehpuria, who is the brother-in-law of the petitioner. Therefore, the fraud perpetrated upon the de-facto complainant is a well-orchestrated ploy hatched among the family relatives, pursuant whereof, an amount of Rs. 23.80 crores have been misappropriated jointly in a fiduciary capacity of entrustment made from the public money. At the time of the disbursement of the said credit facility, the lady petitioner executed a Declaration, Letter of Guarantee dated 26.07.2023 and a Memorandum of Deposit of Title Deeds dated 04.10.2023, in favour of the de-facto complainant bank, wherein, inter alia, stating that the property which is mortgaged with the bank to secure the credit facility, belongs to her and there is no encumbrance on the said property. It is the case of the prosecution that the bank verily believed such representations and undertaking to be true and genuine whereas, later on, it was found that the said mortgaged property is encumbered. The sinister conspiracy wherein the petitioner played a crucial role shall be further apparent and evident from the stance which the petitioner had taken before the learned Debt Recovery Tribunal in connection to a proceeding initiated by the bank wherein, the said petitioner had categorically stated in her written objection that the said property was never mortgaged with the bank. Such stance is clearly contradicted by the letter dated 22.04.2024 issued by the borrowing firm, wherein her husband had categorically stated that the said mortgaged property, which is a collateral for the credit facility availed by them, was being used by a family relative of theirs, and zero rent were collected. Hence, the said collateral is given in good faith and no NOC is required. Thus, it is evident that the lady petitioner and her husband, along with other family members have played hand in gloves to defraud the bank by siphoning of public money. Presently, in terms of the directions passed by this Court, the de-facto complainant has handed over various incriminating materials including the forensic audit report to the present investigating agency, which is a part of the case dairy now. On bare perusal of the said forensic audit report, it would be evident that out of the total credit facility, which was availed, a sum of Rs. 79.45 lakhs were diverted into a proprietorship concern namely, Madhuram Enterprise, wherein the said petitioner is the sole proprietor, and a further sum of Rs. 1.86 lakhs were utilised for her own usage and wrongful gains. The stand taken by the said petitioner that she is a mere guarantor and hence, the petitioner shares the same parity with another accused, namely Rajni Fatehpuria, who has been granted anticipatory bail by the Hon'ble Supreme Court of India is not correct. Contrary to such stance, it is submitted that the said petitioner is not a mere guarantor rather she is deeply involved in the commission of the offences and her role is clearly evident from the facts as enumerated hereinabove. The undisputed fact of executing a Declaration in favour of the de-facto complainant bank, taking completely contrary stance before the Learned DRT and the forensic audit report showcasing diversion of funds. The further stand taken by the said petitioner before this Court that the petitioner is entitled to the proviso to Section 480 of the BNSS, 2023, is absolutely inapplicable to the instant case as because the said section enumerates the procedure to be followed when any person accused of or suspected of as to commission of any non-bailable offence is arrested or detained without warrant or appears or is brought before a court other than the High Court or the Court of Sessions. Lastly, the investigation is ongoing and the public money which has been siphoned off and misappropriated by the petitioners is yet to be traced out. The materials appearing against the accused Subhas Kumar Fatehpuria are quite obviously much more. He is a principal actor, being a partner of the firm. The petitioner herein, happens to be one of the partners of the borrowing firm and a prime accused in the instant case. At the time of the disbursement of the said credit facility, the petitioner was a signatory to the sanction letter dated 26.07.2023, the addendum sanction letter dated 03.08.2023, and executed Working Capital Facility Agreement(s) dated 26.07.2023, Loan Agreement dated 26.07.2023, Unattested Deed of Hypothecation dated 26.07.2023, Letter of Guarantee dated 26.07.2023 in favour of the de-facto complainant bank. Hence, the said petitioner was aware of all the representations made by the accused persons in the instant case. Furthermore, being the partner of the borrowing firm, the petitioner was aware that the balance sheets were inflated, fake debtors' lists were created and the inventory balances present during that time was also inflated in order to avail such huge quantum of public money from the de-facto complainant bank. The bank has been exposed to undue credit risk due to reliance on such misstated stock statements and the over financing based on the erroneous Drawing Power calculations as furnished by the borrowing firm has resulted in a significant loss for the bank. It is submitted that an inflated audited balance sheet, inflated inventory balances and fake debtors' list showing that the borrowing firm is entitled to receive money, are key financial statements which induced the de-facto complainant bank to disburse such huge quantum of public funds and subsequent diversion, and misappropriation of such money clearly affects the legal right of the bank. Presently, in terms of the directions passed by this Court, the de-facto complainant has handed over various incriminating materials including the forensic audit report to the present investigating agency, which is a part of the case diary now. On bare perusal of the said forensic audit report, it would be evident that out of the total credit facility, which was availed, a sum of Rs. 3.45 crores have been siphoned off at the behest of the present petitioner and has been rerouted to other enterprises of the present petitioner, namely, Agarwal Enterprise wherein he is a partner with the other prime accused, namely, Madhusudan Ajitsaria.

5. Learned Public Prosecutor representing the State submits as follows. During the initial phase of investigation, statements of bank officials were recorded, inspection of business premises was conducted, and notices under Section 94 BNSS were issued to AU Small Finance Bank, RBI, ICICI Bank, and other concerned entities. Voluminous loan and financial records were collected. Accused Madhusudan Ajitsaria was arrested during this phase. Considering the magnitude of public money involved, the complexity of the financial transactions, and the organised nature of the offence, the investigation was transferred to the Anti-Bank Fraud Section, Detective Department, Kolkata Police, and the undersigned took over as Investigating

Officer. During the year 2023, the accused persons, acting in concert and in furtherance of a well-planned criminal conspiracy, approached AU Small Finance Bank Ltd. for availing multiple credit facilities in the name and style of M/s Agarwal Pipe & Fittings, projecting the firm as a financially sound and actively functioning business entity. On the basis of representations made by the accused and the documents submitted by them, the bank sanctioned the following facilities: Cash Credit facility amounting to approximately Rs. 22.20 crore; Term Loan-I amounting to Rs. 72.22 lakh; and Term Loan-Il amounting to Rs. 88.50 lakh. The said credit facilities were secured by hypothecation of stocks and book debts of the borrower firm, coupled with mortgage of an immovable property at Belgharia, standing in the name of accused Mamta Ajitsaria, who acted as guarantor and mortgagor. The acceptance of these securities was a decisive factor for the bank in sanctioning high-value credit limits. For the purpose of sanction and assessment of drawing power, the accused persons submitted audited financial statements, stock statements, and financial declarations portraying an apparently robust financial position of the firm. The documents so submitted reflected: Stock-in-trade valued at approximately Rs.30.66 crore, and Sundry debtors amounting to approximately Rs.11.84 crore. Relying upon these representations and declarations, the bank assessed the drawing power and released substantial public funds in favour of the borrower firm. However, subsequent investigation, including examination of audit reports, bank records, field verification, and judicial material, has revealed that the aforesaid figures were grossly inflated, inconsistent with the actual scale of business operations, and not supported by corresponding commercial activity. The exaggeration of stock and debtor figures was not incidental or accidental, but formed an integral part of the modus operandi adopted by the accused to artificially enhance drawing power and fraudulently avail credit facilities far in excess of their genuine business requirements. It has emerged that Mr. Subhash Kumar Fatehpuria, one of the partners and guarantors, was a signatory witness to the tenancy agreement and had full knowledge of the subsisting tenancy. Despite such knowledge, the property was represented before the bank as vacant and unencumbered, thereby inducing sanction of higher credit limits on the basis of misrepresented security value. Out of the total sanctioned amount, a sum of approximately Rs. 20.49 crore was transferred on 28.07.2023 to ICICI Bank Ltd. towards closure of earlier loan liabilities. The remaining portion of the loan amount was partly diverted towards non-business purposes, including personal expenses, credit card payments, and transfers to related entities. The bank-appointed stock audit (SRB & Associates, inspection dated 09.03.2024) recorded existence of stock at the Hind Ceramics stockyard and partial physical verification. However, the Court-appointed Receiver, during inspection on 09.09.2025 (report filed on 15.09.2025 before Hon'ble DRT-III, Kolkata), found no stock or goods at the borrower's premises, and the concerned godowns were found locked, with keys stated to be under the control of the defendants. This discrepancy clearly indicates removal, diversion, concealment, or disposal of hypothecated stock/proceeds after availing bank finance and during subsistence of the charge, which is a crucial aspect requiring custodial interrogation and further investigation. Investigation has revealed that accused Subhash Kumar Fatehpuria was not a peripheral participant but a principal decision-maker in the affairs of M/s Agarwal Pipe & Fittings and a direct beneficiary of the credit facilities fraudulently availed from AU Small Finance Bank Ltd.

6. I heard the learned counsels appearing on behalf of the petitioners, the State and the de facto complainant and perused the applications, the case diary and the written notes of submissions.

7. The prime allegation is that a loan was taken for a huge amount of money from a bank. Soon thereafter the loan was transferred to another bank. Now, it has been alleged that the stocks that were shown at the time of taking loan were inflated and thereafter, deliberately depleted by the accused. Even the property placed as collateral security was found to be encumbered. These are undoubtedly very serious allegations.

8. The issue of inflating of the stock is, however, difficult to comprehend as two successive banks had the occasion of examining the same.

9. It is contended on behalf of the petitioners that the petitioner, Mamta Ajitsaria only acted as a guarantor. Even at the time of sanction of loan, it was found that the property placed as collateral security from her was found having encumbrance. She stands substantially on the same footing as another co-accused lady namely, Rajni Fatehpuria who was granted anticipatory bail by the Hon'ble Apex Court on 19.08.2024. Quite like the said lady, the petitioner Mamta Ajitsaria is also not a partner in the firm which allegedly availed of the credit facility purportedly through inflated or manipulated reports. She was only a guarantor like the said co-accused. She is also a female member of the household.

10. Therefore, so far as the petitioner Mamta Ajitsaria is concerned, she seems to stand quite on the same footing as the accused Rajni Fatehpuria, who was granted anticipatory bail by the Hon'ble Supreme Court. Even as regards the allegation that the said accused had taken out some money, it would appear that she had pumped in more funds in the concern than were taken out.

11. As regards the other accused Subash Kumar Fatehpuria, he is a partner in the firm, which allegedly committed the fraud. He was also a guarantor. Quite like the arrested accused Madhusudan Ajitsaria, he was apparently directly involved in the conspiracy of defrauding the bank. He was also a signatory to the tenancy agreement in question and had full knowledge of the subsisting tenancy. The Court appointed a receiver during investigation who found no stock or goods at the borrower's premises and the concerned godowns were found locked with the keys were stated to be under the control of the accused. However, during pendency of this application he had cooperated with investigation and met the I.O. a number of times. In fact, the last time he was given a notice to meet was in August, 2025.

12. Considering the above, the other materials available in the case diary, the fact that the petitioner in CRM (A) 1821 of 2025 is a lady and is standing substantially on the same footing as the accused Rajni Fatehpuria who was granted anticipatory bail by the Hon'ble Apex Court, and that the petitioner in CRM (A) 2635 of 2025 has cooperated with the investigation by meeting the I.O. a number of times and purportedly suffers from a serious auto-immune disease Myasthenia Gravis, the fact that bulk of relevant documents have been seized by the Investigating Agency and a connected proceeding is pending before the DRT, I do not think that custodial interrogation of the petitioners is required in this case and I am inclined to grant anticipatory bail to the petitioners.

13. In the event of arrest, the petitioners shall be released on bail upon furnishing a bond of Rs. 5,00,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the Arresting Officer and also be subject to further conditions that the petitioners shall not threaten or intimidate the witnesses. The petitioners shall co-operate with investigation, shall surrender before the learned jurisdictional Court and pray for bail within four weeks from the date and regularly attend the jurisdictional Court. The petitioner Subash Kumar Fatehpuria shall meet the I.O. once a fortnight till submission of report in final form. The petitioners shall not leave the country without the permission of the jurisdictional Court.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)