

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Criminal Miscellaneous Jurisdiction

01.07.2026
Item No. 8
Ct. No. 5
Sayan

C.R.M. (A) 356 of 2026

In Re:- An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

In the matter of: **Sukumar Sarkar**

... Petitioner

Mr. Subhasish Misra
Mr. Satyajit Paul
Mr. Rounak Ghosh

...for the Petitioner.

Mr. Avrojoyti Das, Id. APP
Ms. Madhushri Dutta

...for the State.

- 1.** The petitioner has come up to pray for the anticipatory bail at a time when warrant of arrest could not have been executed against him and the Trial Court has initiated the statutory process for issuance of proclamation against the petitioner.
- 2.** The petitioner has been represented by Mr. Subhasish Misra learned advocate. He submits that the petitioner has not yet been declared as a proclaimed offender by the Court. He further submits that it is not in all cases there would be a total embargo on considering the application for grant of anticipatory bail, in the event of declaration under Section 84 of the BNSS, but the Court has to see the circumstances, the nature of the offence and back ground based on which such a proclamation was issued. That the Court is required to be satisfied only about whether the accused person would cooperate in the investigation or not, to grant his prayer for anticipatory bail. In support of his argument learned

advocate for the petitioner has relied on a judgment of the Supreme Court in ***Asha Dubey versus State of Madhya Pradesh [dated 12th November, 2024 being Criminal Appeal No. 4564 of 2024 @ SLP (CRL.) No. 13123 of 2024]***. It has further been submitted that 3 accused persons, who were earlier incarcerated in connection with the present case, have been released on bail. Furthermore, it is stated that the petitioner was never remotely connected with the alleged criminal activity and he has only been entangled in the same, being the neighbor of the principle accused person. That the de-facto complainant has made allegations against a large number of persons most of which are general and omnibus in nature; therefore, the uncertain and vague nature of allegations should not necessitate custody of the petitioner, more so after submission of charge-sheet. Also that, the petitioner in the instant case is a physically challenged person having suffered amputation of one leg, therefore, according to Mr. Misra, allegation of petitioner's involvement in the crime is only improbable and concocted.

3. Mr. Das learned APP has raised strong objection as regards the prayer of the petitioner for anticipatory bail. His contention is that the accused has willfully evaded the process of the Court and avoided surrender before Court. That, proclamation has been issued against him under Section 84, BNSS and law virtually prohibits grant of anticipatory bail to an offender who has been absconding, evading the Court's process and against whom proclamation has been issued.
4. The interplay between Section 482, BNSS (Anticipatory Bail) and Section 84, BNSS (Proclamation for absconding persons) of the Criminal Procedure Code establishes that

a person declared as an absconder/proclaimed offender under Section 84, BNSS is generally not entitled to the relief of anticipatory bail under Section 482, BNSS, as granting such relief would undermine judicial authority and encourage evasion of legal process. A person declared as a proclaimed offender/absconder under Section 84, BNSS is ordinarily not entitled to anticipatory bail under Section 482, BNSS. The procedural requirements under Section 84(2), BNSS and the formal declaration under Section 84(4), BNSS must be strictly complied with before the bar on anticipatory bail applies. Mere issuance of non-bailable warrants or initiation of proceedings under Section 84, BNSS, without final declaration, does not automatically bar consideration of anticipatory bail. The power under Section 482, BNSS is extraordinary and deserves to be applied wisely.

5. The consistent legal position established across multiple judgments is that once a person is declared as an absconder/proclaimed offender in terms of Section 84 BNSS, they are not entitled to the relief of anticipatory bail. The Supreme Court in ***Prem Shankar Prasad versus State of Bihar at (2022) 14 SCC 516*** held that "in cases where an accused against whom non-bailable warrants is pending and the process of proclamation under Section 84 BNSS have been initiated, the relief of anticipatory bail should be avoided. The Supreme Court in ***Srikant Upadhyay versus State of Bihar at (2024) 12 SCC 382*** has held that if anyone is declared as an absconder/proclaimed offender in terms of Section 84 BNSS, he is not entitled to relief of anticipatory bail. The landmark judgment in ***State of Madhya Pradesh versus Pradeep Sharma at 2014 2 SCC 171*** established that "If anyone is declared as an

absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail." This principle was further reinforced in **Lavesh versus State (NCT of Delhi) at (2012) 8 SCC 730**, which held that "the person who is 'absconding' and declared as 'proclaimed offender' is not entitled to seek anticipatory bail application normally."

6. Despite the general rule that proclaimed offenders are not entitled to anticipatory bail, the courts have recognized certain exceptions and limitations. The Supreme Court in **Srikant Upadhyay (supra)** has acknowledged that "*this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice.*" Where a person has not been formally declared a proclaimed offender under Section 84(4), BNSS the bar on anticipatory bail does not automatically apply. In cases where the petitioner has cooperated with the investigation and proceedings under Section 84, BNSS have not attained finality, the Court may consider the anticipatory bail application on merits. Where allegations are vague and not specific, Courts may be more inclined to grant anticipatory bail even when the accused is shown as absconding in the charge sheet, provided they have not been formally declared proclaimed offenders.
7. A distinction exists between mere issuance of proclamation under Section 84, BNSS. and formal declaration as a proclaimed offender under Section 84(4), BNSS: In order to decline liberty in terms of anticipatory bail, a person should be a proclaimed offender; the mere issuance of proclamation under Section 84 of the BNSS is not enough for declining anticipatory bail to the applicant.

8. The petitioner is one of the 21 accused persons named in the FIR, though he is not the principal accused. They have been alleged of lynching to death of two persons and causing grievous hurt to others. The principal accused person and some other of the FIR named accused were arrested and later on have been released on bail. After completion of investigation police has submitted chargesheet against the present accused. The accused person has remained absconded and warrant was issued against him. And presently proclamation has been issued by the Court against the present accused person, under Section 84 of the BNSS though he has not yet been declared as a proclaimed offender by the Court under Section 84 (4) of the BNSS. At this stage the petitioner has come to before this Court to pray for anticipatory bail.
9. The Court is conscious that the extraordinary jurisdiction to grant anticipatory bail is intended to protect personal liberty against arbitrary arrest and is not meant to shield an accused who deliberately evades the due process of law. Equally, the Court cannot overlook that the embargo evolved by judicial precedents is attracted ordinarily when the accused has been formally declared a proclaimed offender in accordance with Section 84(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 82(4) of the Code of Criminal Procedure). In the present case, though proclamation has been issued, such declaration has admittedly not yet been made. Therefore, the petition cannot be held to be not maintainable merely because the process under Section 84, BNSS has been initiated.
10. It is true that the filing of the charge-sheet ordinarily indicates completion of investigation and, therefore,

custodial interrogation may no longer remain a relevant consideration. At the same time, submission of the charge-sheet does not obliterate the subsequent conduct of an accused in relation to the process of the Court. Once cognizance is taken and process is issued, every accused is under a corresponding obligation to submit to the jurisdiction of the Court. The administration of criminal justice rests as much upon the protection of personal liberty as upon ensuring that judicial orders are obeyed and criminal proceedings are not rendered nugatory by deliberate evasion of the process of law.

- 11.** The power to grant anticipatory bail is an extraordinary discretionary jurisdiction intended to safeguard innocent persons from arbitrary or motivated arrest. It is neither intended to enable an accused to indefinitely avoid the jurisdiction of the Court nor to convert the extraordinary protection against arrest into a shield against lawful judicial process. Therefore, while the mere issuance of a proclamation under Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, without a declaration under sub-section (4), may not create an absolute statutory embargo against consideration of an application for anticipatory bail, the conduct of the accused in avoiding execution of warrants and compelling the Court to initiate proclamation proceedings is undoubtedly a relevant and weighty circumstance while exercising judicial discretion.
- 12.** The decision of the Supreme Court in ***Asha Dubey (supra)*** does not lay down as an absolute proposition that every accused against whom proclamation proceedings have been initiated is entitled to anticipatory bail. The judgment merely recognizes that the Court's jurisdiction under Section 482, BNSS is not completely

extinguished merely because proceedings under Section 84, BNSS have been initiated, and that exceptional facts may justify exercise of such jurisdiction. The said decision has to be harmoniously read with the earlier decisions in **Lavesh (supra)**, **Pradeep Sharma (supra)**, **Prem Shankar Prasad (supra)** and the recent decision in **Srikant Upadhyay (supra)**, all of which consistently hold that a person who has deliberately evaded the process of law and has been or is liable to be declared a proclaimed offender cannot ordinarily invoke the equitable jurisdiction for anticipatory bail. Thus, what survives is not an unrestricted right but only a narrow residual jurisdiction to be exercised in rare and exceptional circumstances where denial of such protection would itself occasion manifest injustice.

- 13.** In the present case, the petitioner has admittedly not yet been declared a proclaimed offender under Section 84(4) of the BNSS. Consequently, this Court cannot hold that the application itself is rendered non-maintainable merely because proclamation proceedings have been initiated. Nevertheless, maintainability of an application and entitlement to the discretionary relief are two distinct considerations. The Court must still examine whether the petitioner has been able to make out a case warranting exercise of the extraordinary jurisdiction under Section 482 of the BNSS.
- 14.** The allegations in the present case relate to a serious incident involving unlawful assembly resulting in the death of two persons and grievous injuries to others. The petitioner has been specifically charge-sheeted after completion of investigation. Although learned counsel has argued that the allegations against him are omnibus and that some of the co-accused have already been

enlarged on regular bail, such circumstances by themselves cannot eclipse the admitted fact that after submission of the charge-sheet the petitioner did not submit to the jurisdiction of the Trial Court, compelling issuance of warrant of arrest and thereafter initiation of proceedings under Section 84 of the BNSS. Grant of anticipatory bail at this stage, in the absence of any satisfactory explanation for such conduct, may have the effect of diluting the authority of the Court's process and defeating the very purpose for which proclamation proceedings have been incorporated in the statute.

- 15.** The doctrine of parity also does not advance the petitioner's case. The co-accused who have been enlarged on bail had first submitted themselves to the jurisdiction of the competent Court and thereafter obtained regular bail in accordance with law. An accused who has chosen not to appear before the Court despite issuance of process cannot claim parity with those who have respected the judicial process. Equality before law under Article 14 contemplates equal treatment amongst similarly situated persons; an absconding accused and an accused who has voluntarily submitted to the jurisdiction of the Court do not constitute the same class for the purpose of grant of discretionary relief.
- 16.** It is also well settled that once investigation has culminated in a charge-sheet and the accused is required to appear before the Trial Court, the normal course expected in law is that he should surrender before the Court concerned and seek regular bail. Entertaining a prayer for anticipatory bail at such a stage, despite the accused having avoided execution of warrant and notwithstanding commencement of proclamation proceedings, would virtually permit him to

circumvent the ordinary process of criminal administration. Such a course would be inconsistent with the equitable nature of the jurisdiction under Section 482 BNSS.

- 17.** Having regard to the totality of the circumstances, this Court is of the considered opinion that although the present application is legally maintainable since the petitioner has not yet been declared a proclaimed offender under Section 84(4) of the BNSS, the conduct of the petitioner in avoiding the process of the Court, the gravity of the allegations, the stage of the proceedings and the absence of any exceptional or extraordinary circumstance do not persuade this Court to exercise the extraordinary discretionary jurisdiction of granting anticipatory bail. The appropriate course for the petitioner would be to surrender before the jurisdictional Court and seek regular bail, which shall naturally be considered on its own merits and in accordance with law, uninfluenced by the rejection of the present application.
- 18.** Accordingly, the prayer for anticipatory bail stands rejected.

(Rai Chattopadhyay, J.)