

30.06.2026
Item No. 03
Ct. No. 5
Sayan

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

C.R.M. (A) 378 of 2026

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

In the matter of : **Nurjamal Mia and Ors.**

... Petitioners.

Mr. Nilay Chakraborty
Mr. Sourav Lohani

...for the Petitioners.

Mr. Avrojoyti Das, Id. APP
Mr. Atul Dong

...for the State.

- 1.** The instant is a prayer for bail by the nine petitioners who have been allegedly implicated in an extraordinarily belated FIR, due to political vendetta.
- 2.** Mr. Nilay Chakraborty, learned advocate for the petitioner has referred to the copy of the FIR annexed with the instant petition and submitted that the FIR was lodged on May 19, 2026 alleging an incident of May 02, 2021. Such inordinate delay of about 5 years has never been explained by the de facto complainant. His further submission is that the entire allegations made in the FIR are only false and fabricated and no such incident as alleged has ever happened. Additionally, it has been submitted that the FIR is the result of political vendetta as the petitioners are followers of the rival political party. Therefore, he seeks release of the petitioners on bail.
- 3.** Mr. Avrojoyti Das, learned APP has raised objection. He submits that, after promulgation of the judgment of the Supreme Court in ***Mohammed Rasal C. and Another Vs. State of Kerala and Another*** reported at **2025 SCC**

OnLine SC 2728, the law is now settled in the way that the petitioners have to first approach the Sessions Judge seeking pre-arrest bail and without doing so, they cannot make similar prayer before the High Court directly and in a mechanical manner, unless there is some special or extraordinary circumstances for them to come directly before the High Court.

4. Let the relevant portion of the judgment in **Mohammed Rasal C. (supra)** be quoted as hereinbelow: -

“6. We find that in this case, the petitioners had approached the High Court directly for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, ‘BNSS’), without first approaching the Sessions Court for the said relief. We are of the opinion that though the concurrent jurisdiction is conferred upon the Sessions Court and the High Court to entertain a prayer for pre-arrest bail under Section 482 of the BNSS (formerly, Section 438 CrPC), the hierarchy of Courts demands that no person seeking such remedy should be encouraged or allowed to directly approach the High Court for exercising jurisdiction under Section 482 of the BNSS (formerly, Section 438 CrPC) by bypassing the jurisdiction of the concerned Sessions Court.

7. The Sessions Judge exercises powers under Section 438 CrPC in relation to all cases registered with the police stations in the particular District. This area-wise distribution of work would make it much more convenient and facilitate expeditious disposal, if the application for pre-arrest bail is first filed before the Sessions Court which would have a direct and first-hand assistance of the concerned Public Prosecutor appointed for that particular District. The Sessions Court would also have an immediate access to the Case Diary thereby facilitating a better appreciation of facts of the case.

8. We further feel that if the practice of entertaining the applications for pre-arrest bail directly in the High Court is encouraged, and the parties concerned are not relegated to first approach the Sessions Court concerned, the High Court would be flooded with a spate of pre-arrest bail applications thereby creating a chaotic situation. We say so, because if the

parties are required to approach the Sessions Court concerned for seeking remedy of pre-arrest bail, there is a strong probability that significant number of applications would be allowed at that level only thereby acting as a filtration process before the process reaches the High Court.

9. High Court, for reasons to be recorded, may entertain an application for pre-arrest bail directly in special/extra-ordinary circumstances.”

5. It is, therefore, found to be the dictum of the Court in the said judgment that the High Court may entertain an application for pre-arrest bail directly, only in special and/or extraordinary circumstances and after recording reasons for the same.
6. Mr. Chakraborty, learned advocate for the petitioner in reply has submitted with reference to an order of the Supreme Court dated November 12, 2025 in Special Leave to Appeal (Crl) No. (s) 6588/2025 **[Mohammed Rasal C. and Another versus State of Kerala and Another]** that the issue as above, is now pending for determination, by a three-Judges Bench of the Supreme Court.
7. This raises the question whether, despite having concurrent jurisdiction over pre-arrest bail, the High Court would not be directly considering an application for it, which would seem to be in conflict with and violate the Supreme Court's decision in **Mohammed Rasal C.'s case (supra)**, at a time when the judgment in **Mohammed Rasal C.'s case (supra)**, is awaiting consideration by a Larger Bench.
8. The mere fact that a question of law has been referred to a Larger Bench does not dilute the binding force with the existing decision. Until and unless the Larger Bench

over-rules, modifies or stays the operation of the earlier judgment, the same remains in vogue irrespective of the fact whether the decision is subject to be tested by the Larger Bench.

9. It is beneficial in this regard to quote Article 141 of the Constitution of India which provides for the Doctrine of Precedent –

“The law declared by the Supreme Court shall be binding on all Courts within the territory of India.”

The Doctrine of Precedent is that, when a Court decides a question of law, that declaration continues to be “law declared”, until any one of the following incidents happens -

- i. It is over-ruled by a Bench of equal or larger strength,
- ii. It is distinguished on facts,
- iii. It is held to be per incuriam,
- iv. The Constitution is amended.

10. A ‘reference’ of issue for determination by a Larger Bench does not fall within any of the criteria as mentioned above. A reference simply means that, another Bench is doubtful about the correctness of the earlier decision and wants reconsideration. A reference is not an over-ruling of the earlier decision. It merely keeps the issue open for an authoritative determination. Consequently, the earlier judgment continues to be binding.

11. In ***Central Board of Dawoodi Bohra Community Vs. State of Maharashtra*** reported in ***(2005) 2 SCC 673***, the Constitution Bench of Supreme Court has laid down

the principles that a Bench of lesser strength cannot disagree with a Larger Bench; if a Bench doubts the correctness of an earlier decision, it must refer the matter to a Larger Bench; also that, **until the Larger Bench decides, the earlier judgment continues to hold the field (emphasized).**

- 12.** This is the settled principles governing precedents. Mere pendency of a reference before a Larger Bench does not eclipse the binding nature of the existing judgment. In a situation like this, a refusal to follow the existing judgment which has not yet been over-ruled, amounts to violation of Article 141 of the Constitution.
- 13.** In the present case, once can note that, the law decided in ***Mohammed Rasal C.'s case (supra)*** has been referred to, for decision by a three-Judges Bench of Supreme Court which is still pending. Following the law settled as discussed above, particularly, that pronounced by the Supreme Court Constitution Bench in ***Central Board of Dawoodi Bohra Community (supra)***, this Court is bound by the dictum of Supreme Court in judgment of ***Mohammed Rasal C. (supra)***. According to the same, this Court is not to entertain the application of the petitioners for pre-arrest bail excepting being satisfied about existence of any special or extraordinary circumstances. Without the same, the Court is bound by the finding of the Hon'ble Supreme Court in the said case that, the hierarchy of Court's demands that no person seeking such remedy should be encouraged or allowed to directly approach the High Court for exercising jurisdiction under Section 482 of the BNSS (formerly Section 438 Cr.P.C.), by bypassing the jurisdiction of the concerned Sessions Court.

- 14.** It is pertinent to note that, no explainable special or extraordinary circumstances could be found in the instant case for which the matter may be entertained by this Court at this moment, when the petitioners have directly approached this Court without first approaching the Sessions Court.
- 15.** Hence, in accordance with the law settled by dint of judgment in ***Mohammed Rasal C.'s case (supra)***, it is advisable that the petitioners should first approach the Sessions Court with their prayer for pre-arrest bail and should only approach this Court with the similar prayer, if they do not succeed before the Sessions Court.
- 16.** For the reasons as discussed above, the instant bail petition stands disposed of. It is clarified that, merits of the case have not been entered into by this Court. Let the petitioners first approach the Sessions Court with their prayer for pre-arrest bail, in due compliance with the direction of the Supreme Court in ***Mohammed Rasal C.'s case (supra)***. However, it is directed further that, till the time, the Sessions Court finally decides on the petitioners' prayer as above, no coercive steps should be taken against the petitioners.
- 17.** CRM (A) No. 378 of 2026 is disposed of.

(Rai Chattopadhyay, J.)