

**IN THE HIGH COURT AT CALCUTTA  
CIRCUIT BENCH AT JALPAIGURI  
CRIMINAL MISCELLEANOUS JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Tirthankar Ghosh**

**CRM (A) 953 OF 2025**

***Sandip Das & Ors.  
versus  
The State of West Bengal & Anr.***

For the Petitioners : Mr. Aniruddha Biswas  
Mr. Manoj Saha  
Ms. Kanak Mishra

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP  
Mr. Nilay Chakraborty, Ld. APP  
Ms. Sukanya Adhikary

For the O.P. No.2 : Mr. Arijit Ghosh

**Heard On** : 05.01.2026 & 13.01.2026.

**Judgement On** : **13.01.2026**

**Tirthankar Ghosh, J. :**

The present application for Anticipatory Bail has been preferred under Section 438 of the Code of Criminal Procedure, 1973/Under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Malbazar Police Station Case No. 425 of 2025 dated 15.09.2025 under Sections 85/74/79/316(2) of the Bharatiya Nyaya Sanhita, 2023 read with Section 3/4 of the DP Act, 1961 and read with Section 27 of the Hindu Marriage Act, 1955, read with Section 03(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Learned advocate appearing for the petitioners submits that the petitioners have been implicated in connection with the instant case because of a matrimonial discord. It has been contended that the petitioner no.1 has instituted a matrimonial case being MAT No. 275/2025 which is pending before the learned District Judge, Alipurduar. According to the learned advocate the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been incorporated in order to deprive the petitioners to apply for anticipatory bail. Learned advocate has also pointed out that petitioner no.5 himself happens to be a member of Scheduled Castes community and to that effect a document has been enclosed.

Learned advocate appearing for the de-facto complainant opposes the prayer for anticipatory bail and submits that the application for anticipatory bail is not maintainable since there is a specific clause under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. To that effect attention of the Court is drawn to Section 18 of the Act which reads as follows:

***“18. Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”***

Reference has also been made to Kiran – Vs. – Rajkumar Jivraj Jain and Anr. reported in 2025 SCC OnLine SC 1886. Learned advocate has relied upon paragraphs 6 and 7.

The same judgment has also been relied upon by the learned advocate appearing on behalf of the petitioner.

Learned advocate appearing for the State has produced the Case Diary and drawn the attention to the notices issued under Section 35(3) of the BNSS. Learned APP submits that he has instructions that the accused persons have appeared and complied with such notices. Learned advocate also submits that no injury reports are available in the Case Diary.

The judgment of the Hon'ble Supreme Court dealt in detail and paragraphs 6, 6.1 and 6.2 which are relevant are quoted below:

*“6. In light of the parameters in relation to the applicability of Section 18 of the Act emanating from afore-discussed various decisions of this Court, the proposition could be summarised that as the provision of Section 18 of the Scheduled Caste and Scheduled Tribes Act, 1989 with express language excludes the applicability of Section 438, Cr. P.C., it creates a bar against grant of anticipatory bail in absolute terms in relations to the arrest of a person who faces specific accusations of having committed the offence under the Scheduled Caste and Scheduled Tribe Act. The benefit of anticipatory bail for such an accused is taken off.*

*6.1. The absolute nature of bar, however, could be read and has to be applied with a rider. In a given case where on the face of it the offence under Section 3 of the Act is found to have not been made out and that the accusations relating to the commission of such offence are devoid of prima facie merits, the Court has a room to exercise the discretion to grant anticipatory bail to the accused under Section 438 of the Code.*

**6.2.** *Non-making of prima facie case about the commission of offence is perceived to be such a situation where the Court can arrive at such a conclusion in the first blush itself or by way of the first impression upon very reading of the averments in the FIR. The contents and the allegations in the FIR would be decisive in this regard. Furthermore, in reaching a conclusion as to whether a prima facie offence is made out or not, it would not be permissible for the Court to travel into the evidentiary realm or to consider other materials, nor the Court could advert to conduct a mini trial.”*

If the judgment relied upon by the petitioner and the de-facto complainant are taken as a whole, it has been held in paragraph 6.1 of the said judgment that in a given case if on the face of it the offence under Section 3 of the Act is found to have not been made out and that the accusations relating to the commission of such offence are devoid of prima facie merits, the Court has a room to exercise the discretion to grant anticipatory bail to the accused under Section 438 of the Code.

Taking into account the merits of the present case, so far as the allegations are concerned it is seen that charge-sheet has been submitted. The charge-sheet has been submitted under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 only against the husband and not against other accused persons. So far as the factual aspect is concerned, if within public view the accusation are taken to be correct the same are applicable to the petitioner no.5 also. The petitioner

no.5 is a member of the Scheduled Caste community which is admitted by the State.

Having considered the totality of the facts of the present case, I am of the opinion that the basic dispute between the petitioner no.1 and the private respondents emanate from a matrimonial discord. The petitioners have cooperated with the investigation. So far as the allegations are concerned the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 were attempted to be invoked against all the inmates of the matrimonial home irrespective of the caste to which they belong by repeating the same allegations.

Having regard to the nature and character of the dispute, I am of the view that the rider provided by the Hon'ble Supreme Court in the judgment referred to above do apply in the present case. Accordingly, the provisions of Section 438 of the Cr.P.C. /Section 482 of the BNSS are applicable to the facts of the present case.

I have taken into account the accusations made herein and I am of the view that the custodial detention of the present petitioners are unwarranted in the facts of the present case. Accordingly, the prayer for anticipatory bail of all the petitioners is **allowed**.

As such, I direct that in the event of arrest, the petitioners be released on bail upon furnishing a bond of Rs.20,000/- (Rupees Twenty Thousand only) each, with two sureties of Rs. 10,000/- (Rupees Ten Thousand only) each, one of whom must be local to the satisfaction of the investigating

officer/arresting officer of the case and also subject to the conditions as laid down under Section 438(2) of the Cr.P.C. and/or under Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

With the aforesaid observations CRM (A) 953 of 2025 is **allowed**.

This order of anticipatory bail will remain in force for a period of eight weeks as the charge-sheet has already been submitted.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Tirthankar Ghosh, J.)**