

**In Re: Purna Chandra Chatterjee**

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**Court :** Kolkata

**Decided On :** Jun-25-1975

**Reported in :** 1975CriLJ1815

**Judge :** N.C. Talukdar and ;A.N. Banerjee, JJ.

**Appellant :** In Re: Purna Chandra Chatterjee

**Judgement :**

**N.C. Talukdar, J.**

1. This is an application for anticipatory bail under Section 438 of the Code of Criminal Procedure on behalf of one Purna Chandra Chatterjee. The application is with notice to the State and is opposed.

2. The petitioner is stated to be a businessman. A spate of litigations has ensued between him and one Girindra Nath Roy and Dhirendra Nath Roy who are owners of premises No. 1, Dharamtala Street. A title suit also has been started and a criminal case is also pending against the said Roys. Proceedings under Section 144 of the Code of Criminal Procedure were also started at the instance of the petitioner. On or about the 14th June, 1975 Girindra Nath Roy had filed a petition before the learned Chief Metropolitan Magistrate. Calcutta alleging offences under Sections 465, 467, 467/471 of the Indian Penal Code purported to have been committed by the petitioner in respect of an impugned document and the said petition was directed by the learned Magistrate to be treated as the first

information report. Cognizance was taken and investigation has been started in the matter being case No. 379 dated 18-6-75 of the Hare Street Police Station. The matter is under investigation. The petitioner has reasons to believe that he may be arrested on an accusation of having committed non-bailable offence in the said matter and to rule out uncertainty and anxiety an application for anticipatory bail was moved before Sri T. K. Mutsuddi, Chief Judge, City Sessions Court, Calcutta. The learned Chief Judge by his order dated the 19th June, 1975 however rejected the prayer for anticipatory bail on the purported ground that the petitioner has been named as an accused in the complaint and therefore it is his duty to surrender before the learned Magistrate and apply for bail. This order has been impugned and forms the subject-matter of the present application.

3. Mr. Bejoy Kumar Bose, Advocate (with Miss Uma Banerjee, Advocate) appearing in support of the application submitted that on merits there is not much of a case against the petitioner and the grounds on which the learned Chief Judge jettisoned the prayer made on behalf of the petitioner is unwarranted and untenable, Mr. Bose further submitted that his client is a respectable businessman and there is no chance of his absconding if released on bail and that the resultant uncertainty, if he be not granted anticipatory bail, would interfere with his business activities. Mr. Ajit Kumar Roy, Advocate appearing on behalf of the State submitted that the learned Chief Judge rejected the earlier prayer made under Section 438 of the Code of Criminal Procedure but in the facts and circumstances of the case, he left the matter to the discretion of the Court. Subject to this consideration, that if the petitioner be granted anticipatory bail, there should be sufficient terms and conditions to ensure the appearance of the petitioner in course of the enquiry or trial.

4. Having heard the learned Advocates, appearing on behalf of the respective parties and on going through the materials on the record, we ultimately hold that this is a fit and proper case where the prayer made on behalf of the petitioner for anticipatory bail should be allowed. The learned Chief Judge, City Sessions Court, in his order dated the 19th June, 1975 has proceeded, by and large, on the purported ground that if an accused is named in the complaint, he should not be granted anticipatory bail. We have already held in several cases and we observe

again that some meaning and effect must be given to the provisions of Section 438 of the Code of Criminal Procedure, 1973 which is a new one and has been introduced for good reasons. The animus imponentis is clear and the intention of the law-maker is to relieve a person from unnecessary apprehension or disgrace, of being detained in jail for some days before he can apply for bail in cases where he may have been implicated falsely by designing rival, particularly so. in a case where the person concerned is not likely to abscond. The sine qua non of the new provisions are that when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction as envisaged under Section 438 of Act No. 2 of 1974. The mere mention of a person's name in the complaint would not however justify the rejection of his prayer for anticipatory bail made under Section 438, Cr. P. C. without a consideration of the other ingredients required to be taken into view in this context. One possible ground, however, for rejecting such an application is that a warrant of arrest has already been issued duly by a Court of competent jurisdiction, ruling out thereby the first part of the section, namely, 'reason to believe that he may be arrested on an accusation of having committed a non-bailable offence'. In such a case the said provisions would not clearly apply because the stage reached is one beyond the stage of a mere apprehension or 'reason to believe' but a stage of certainty, because of the factum of a warrant having been already issued. The last part of Section 438 of the Code of Criminal Procedure, 1973. is also material as it contains the words 'in the event of such arrest, the person concerned shall be released on bail.' It is, therefore, clear that whether it is a case of ordinary bail or anticipatory bail, it must be preceded by an arrest or an attempt to arrest. The only difference is that in a case where a warrant had already been issued, the person concerned has to surrender to a Court of competent jurisdiction and apply to the same for his bail : but in a case of anticipatory bail, the person concerned who is already armed with an order of anticipatory bail, would, in the event of his arrest on accusation of having committed a non-bailable offence, shall be released on bail on the basis of the abovementioned order. The mere mention of his name in the first report only or in the warrant that has already been issued would not change the complexion of the case. It is of course true that the court considering an application under Section

438 of the Code of Criminal Procedure, 1973 has sots a discretion and on an overall consideration of the facts and circumstances of the case may reject the prayer made thereunder on merits. Without, however, any consideration of such an application on merits, the prayer should not be rejected merely on the ground that the applicant concerned has been mentioned in the complaint. On an anxious consideration of the materials on the record, we hold ultimately that the prayer for anticipatory bail made on behalf of the petitioner should be allowed.

5. In the result, the application succeeds : and we direct that in the event of the petitioner's arrest as apprehended, he shall be released on bail on conditions:

(a) that he shall make himself available for interrogation by a police officer as and when required;

(b) that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(c) that he shall not leave the bounds of Calcutta and the District, of 24-Parganas without the previous permission of the court; and

(d) that he shall co-operate with the investigating officer to complete the interrogation.

6. Let plain copies of the ordering portion as also of this order, countersigned by the Assistant Registrar (Court) of this Bench, be given to the learned Advocates of the respective parties.

**A.N. Banerjee, J.**

7. I agree.