

Cr. Misc. Case No. 426/2026
CNR No. WBHW0100 1142 2026
Present: Sri Mainak Dasgupta
Sessions Judge, In-charge, Howrah
J.O. Code – WB01070

Order No.02 dated 10.03.2026.

The application u/S.482 BNSS arising out of Panchla P.S. Case No. 417 of 2025 dated 15.12.2025 u/Ss. 137(2)/140(3)/3(5)/303(2)/329(4) of BNS and 9/10 Prohibition of Child Marriage Act, 2006 filed by the accused/petitioners namely, 1] Palash Hazra & 2] Kanak Hazra, is taken up for hearing.

Ld. Advocate for the petitioners submitted that the petitioners are the parents of the said Suman Hazra and who allegedly had eloped the victim girl. It was further submitted that even though such incident had occurred on 05.11.2025 and the subsequent alleged event occurred on 28.11.2025, the de facto complainant lodged the F.I.R. on 15.12.2025 and after much delay.

With such submissions, Ld Advocate for the accused/petitioners asserted the prayer for anticipatory bail.

Ld. P.P. raised objection and stated that it would be evident that the minor victim and Suman Hazra had resided at the residence of the present petitioners as a married couple and therefore, there is every possibilities that the Sections 16 and 17 of the POCSO Act might also be applicable against such petitioners.

Perused the case diary.

Considered the submission made by the Ld. Advocate for the accused and the Ld Public Prosecutor.

REASONS

As regards pre arrest bail the Hon'ble Apex Court in Sadhna Chaudhary Vs. State of Rajasthan & Anr., reported in 2022 (237) AIC 205 (SC), has been pleased to hold as follows:-

"14. Law on the applicability or grant of anticipatory bail under section 438 Cr.P.C. may be briefly summarised as under: 14.1. In Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, a Constitution Bench of this Court, Chief Justice Y.V. Chandrachud, speaking for the Court dealt with in detail on the considerations for grant of anticipatory bail. 14.2. In Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others²; this Court relying upon the Constitution Bench judgment in Shri Gurbaksh Singh Sibbia laid down in paragraph 112 of the report the following factors and parameters to be considered while dealing with an application for anticipatory bail:

"(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;
- x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

It would appear that the allegation pertains to the marriage of a minor and her subsequent stay in the house of the petitioners along with the son of the petitioners as husband and wife. Such allegation brings forth the whiff of the commission of a grave offence. Considering such, I am not inclined to allow the prayer and the prayer stands rejected accordingly.

L.C.R. and C.D. be returned.

The Criminal Misc. case is disposed of.

The order be uploaded in the CIS without delay.

Dictated & corrected by me

S. J.

Sessions Judge, In-charge, Howrah