

Cr. Misc. Case No. 489/2026
CNR No. WBHW0100 1294 2026
Present: Sri Mainak Dasgupta
Sessions Judge, In-charge, Howrah
J.O. Code – WB01070

Order No.02 dated 13.03.2026.

The application u/S.482 BNSS arising out of Shalimar Government Railway P.S. Case No. 04 of 2026 dated 31.01.2026 u/Ss.303(2) of BNS filed by the accused/petitioner namely, Md. Kamil Jamil, is taken up for hearing.

Ld. Advocate for the petitioner submitted that the petitioner has got no connection with the instant case and the petitioner came to know that the investigating agency was looking out for him and for which he apprehends arrest and has filed the present application seeking anticipatory bail.

Ld. P.P. raised objection stating that the instant allegation pertains to theft of articles valued at Rs.36,50,000/- and if the relief prayed for by the petitioner is granted, the possibility of recovery of such stolen articles shall stand negated and such would hinder with the process of investigation.

I have perused the T.C.R. and the C.D.

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 appears that the de facto complainant had made a complaint stating that IRCON International Limited is executing the Shalimar Development of coaching terminal by provision of essential Passenger amenities and which was a project of South Eastern Railway and number of articles were purchased by the company and such was stacked at the railway premises of Shalimar Railway Station but thereafter the number of such articles got stolen and which has caused financial loss to the Government exchequer and has also delayed the project work. It would appear that during the process of investigation two accused persons namely, Masoom Alam and Arshad Raja were arrested and thereafter were released on bail by order dated 21.02.2026. Even though Ld. Advocate for the petitioner had highlighted such order to this court yet such would not bear any weighted as the instant application is one under Section 482 BNSS. It would appear from the materials in the C.D. that the present petitioner was also an accused in RPF/Post/SRC (G) case No.5 of 2025 under the RP(UP) Act. The criminal antecedent of the present petitioner does not entitle him to the relief as prayed for. I have also perused the statements of the co-accused persons and it palpably appears that if the

present petitioner is granted the relief as prayed for, the possibility of recovery of such articles of high value shall be put in jeopardy and such shall also hinder the process of investigation.

Considering all such, the prayer for anticipatory bail stands rejected.

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