

Cr. Misc. Case No. 490/2026  
CNR No. WBHW0100 1296 2026  
Present: Sri Mainak Dasgupta  
Sessions Judge, In-charge, Howrah.  
J.O. Code – WB01070

Order No.02 dated 18.03.2026.

The application u/S.482 BNSS arising out of Shyampur P.S. Case No. 84 of 2026 dated 17.02.2026 u/Ss. 126(2)/118(1)/109/ 351(3)/3(5) of BNS filed by the accused/petitioners namely, 1] Sk. Mojammel Ali @ Sk Naren @ Mojammel & 2] Sk. Easdam @ Sk. Yazdam Ali, is taken up for hearing.

The petitioners have stated on affidavit that no application has been filed or rejected before or by the Hon'ble High Court till date.

Heard Ld. Advocate for the 02 accused/petitioners who submitted that the dispute arose out of the allegation of theft of a bird and the allegations have been exaggerated only to keep the petitioners in custody. Ld. Advocate further submitted that even though the alleged incident had occurred on 25.01.2026, the complaint was made on 17.02.2026 and there was no explanation for the delay. With such submissions, Ld Advocate for the accused/petitioners asserted the prayer for anticipatory bail.

Ld.P.P. has raised objections to the prayer and asserted upon the injury report.

Perused the TCR and CD.

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 Others<sup>2</sup>; 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 of assault over the head has been primarily leveled against the petitioner no.1.

The allegation against the petitioner no.2 appears to be generalized in nature and no specific act has been attributed to such petitioner no.2. It also appears that the reason for delay has been well explained in the written complaint itself.

Considering such, I am not inclined to allow the prayer as regards the petitioner no.1. Hence, **the prayer proffered by the petitioner no. 1] Sk. Mojammel Ali @ Sk Naren @ Mojammel stands rejected.**

Considering the aforesaid discussion, the prayer preferred by the petitioner no.2 is allowed.

#### ORDER

Considering all the facts and circumstances of the case, anticipatory bail is granted to the accused/ petitioner, namely, 2] Sk. Easdam @ Sk. Yazdam Ali, subject to the following conditions:-

(i) In the event of arrest, the petitioner shall be released on bail upon furnishing a bond of Rs.5,000/- with two regd. Sureties of Rs.2,500/- each, subject to the satisfaction of the Arresting Officer and ;

(ii) the petitioner(s) shall make himself available for interrogation by a police officer as and when required;

(iii) the petitioner (s) 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;

TCR and CD 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