

**(2024) 03 SC CK 0066**

**Supreme Court Of India**

**Case No:** Criminal Appeal No. 1772 Of 2024

Sabita Paul

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

**Date of Decision:** March 22, 2024

**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 120B, 149, 354, 376, 389, 506
- Code of Criminal Procedure, 1973 - Section 439(2)
- Information And Technology Act, 2000 - Section 67A

**Hon'ble Judges:** Vikram Nath, J; Sanjay Karol, J

**Bench:** Division Bench

**Advocate:** Charu Ambwani, Anwesha Saha, Astha Sharma

**Final Decision:** Allowed

**Judgement**

Sanjay Karol, J

1. Leave granted.

2. On the basis of complaint filed by Smt. "X" (hereinafter referred to as the complainant), and pursuant to the order passed by the Judicial Magistrate, Siliguri, West Bengal, FIR No.438 of 2022 dated 07.05.2022 was registered at Police Station, Siliguri, against two accused persons namely, Supratim Paul and his mother Sabita Paul. It is alleged that Supratim Paul, the neighbour of the complainant had discreetly taken photographs of the complainant without her knowledge or consent and that such photographs were obscene, indecent, salacious, and offensive and were threatened to be circulated on the social media platforms. Supratim Paul approached the complainant to extort money, but his demands were not met. Further, Supratim Paul shared the same on the phone of his mother (present appellant) who also in conspiracy with her son tried to blackmail the complainant to extort money. In a nutshell, this is the case set out by the complainant.



3. The record reveals that the prime accused Supratim aged 23 years stands enlarged on bail and no challenge has been laid to the said bail order.

4. It is also a matter of record that the instant appellant i.e. Sabita Paul, the mother of the prime accused moved an application seeking anticipatory bail, firstly before the Sessions Court and thereafter before the High Court which indisputably stood rejected. This was all before the filing of the charge sheet dated 07.05.2022. It is a matter of record that post dismissal of such applications, on 20.01.2023, the instant appellant again applied for anticipatory bail before the High Court which stood allowed vide order dated 12.06.2023 (Annexure P-9 page 83). The complainant by filing an application under Section 439(2) of the Code of Criminal Procedure, 1973 sought cancellation of such an order which stood allowed vide impugned order dated 20.09.2023 on the ground that the instant appellant had suppressed "material facts of" dismissal of her previous attempts to secure anticipatory bail.

5. The appeal thus arises out of such order of cancellation of granting anticipatory bail. At this juncture, we may also note that this Court vide order dated 06.11.2023 had granted interim protection in favour of the accused subject to all cooperating in the investigation and trial. Before us, it is not in dispute that the instant appellant is in full compliance with such an order. It is not the case of the respondents that post the grant of interim protection the appellant, has, in any manner impeded the cause of justice.

6. The concept of anticipatory bail came to be part of the criminal law landscape via the 41st Report of the Law Commission which recommended the inclusion of such a provision, which then stood incorporated in the Code of Criminal Procedure, 1973. Over the years, many judgments of this Court have considered that a Court must weigh while considering an application for anticipatory bail. In *Dr. Naresh Kumar Mangla v. Anita Agarwal & Ors* (2021) 15 SCC 777., a three-Judge Bench laid down the following factors :

"17. The facts which must be borne in mind while considering an application for the grant of anticipatory bail have been elucidated in the decision of this Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra* [*Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] and several other decisions. The factors to be considered include : (SCC pp. 736-37, paras 112-13)

"112. ... (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 fleeing from justice;



- (iv) the likelihood of the accused repeating similar or other offences;
- (v) whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting them;
- (vi) the impact of the grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) the courts must carefully evaluate the entire material against the accused. 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 such 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 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."

7. A perusal of the record reveals that the prime accused, namely, Supratim Paul has been charged under Section 376, 354, 389, 506, and 120-B IPC and he has been granted anticipatory bail. The present appellant has been charged under Section 120-B IPC and Section 67A of the Information & Technology Act, 2000. It can be seen that the alleged act of the instant appellant is inextricably bound to the acts of the prime accused. It is alleged that he had secured pictures of the complainant, that were compromising in nature, which then the instant appellant used to extort and to blackmail the complainant.

8. While granting anticipatory bail to the prime accused, the learned District Judge had observed that it was not a fit case for custodial interrogation. It has not been brought to our notice that such an order of anticipatory bail has been challenged and if it has, what fate has it met? Then, it follows that the secondary accused would also be not required, in the attending facts to be interrogated in custody.

9. Grant of bail based on parity is not a claim of right. The same is well-established. While applying this principle of parity, the Court is required, as was recently observed in *Tarun Kumar v. Assistant Director Directorate of Enforcement* 2023 SCC OnLine SC 1486, the Court is required to focus on the role attached to the accused



whose application is under consideration. In the facts, the prime accused who is alleged to have initially conducted the blackmail, whom the complainant is said to have paid 'hush-money', has been granted bail and the role played by the instant appellant was only to further the alleged acts of her son. She has not acted independently, to further aggravate the situation.

10. In that view of the matter, we find it fit to confirm the order dated 12.06.2023 granting anticipatory bail to the instant appellant, setting aside the order of cancellation of bail passed by the Division Bench in the impugned judgment and order. We reiterate that the condition upon which this Court granted interim protection, which was that the appellant would extend all cooperation in the investigation and trial still accompanies.

11. The appeal is allowed with the above observations. Pending application(s), if any, shall stand disposed of.