

7 & 12
31.12.2020
rrc/ss

**CRM 10914 of 2020
(via Video Conference)**

In re : An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Hanskahali PS Case No. 571 of 2020 dated 27.10.2020 under Sections 341/326/307/34 of the Indian Penal Code.

In the matter of : **1. Gour Chandra Sarkar**
2. Samar Sarkar

..... petitioners

w i t h

**CRM 11294 of 2020
(via Video Conference)**

In re : An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Hanskahali PS Case No. 569 of 2020 dated 27.10.2020 under Sections 341/326/307/34 of the Indian Penal Code.

In the matter of : **1. Gour Chandra Sarkar**
2. Samar Sarkar
3. Debesh Sarkar

..... petitioners

Mr. Mukunda Lal Sarkar

....For the petitioners

Mr. Narayan Prasad Agarwala
Ms. Subhasree Patel

**.....For the State
(in CRM 10914/2020)**

Mr. Arijit Ganguly
Mr. Sanjib Kumar Dan

**.....For the State
(in CRM 11294/2020)**

CRM 10914 of 2020 and CRM 11294 of 2020 are taken up together due to identity of the complaint from which those arose.

The petitioners submit that the petitioners apprehend arrest in connection with the second FIR lodged in connection with the same set of offences, for which no arrest is permissible in law.

Learned counsel for the petitioners argues that the second FIR for similar offence ought to be treated as merged with, or being a part of, the first FIR.

It is further submitted that the weapon of offence has already been recovered and that no useful purpose will be served in arresting the petitioners. The present applications for anticipatory bail have been made on such premise.

Learned counsel appearing in both matters for the State submit that the nature of the complaints lodged are different and pertain to different sets of acts. Moreover, the injured persons in case of the two FIRs are also different. As such, the principle of merger of the FIRs does not apply to the present case.

It appears from the case diary, handed over today, that the nature of injury and the offences alleged were grievous in nature. That apart, the petitioners cannot blow hot and cold in the same breath by moving anticipatory bail in connection with two separate FIRs merely on the ground that the two FIRs were not technically sufficient to initiate two separate investigations, thereby attempting to obviate arrest under either FIR.

Even if the principle of merger of FIRS were to be applied, each of the FIRs would comprise of a component of the other, conferring right upon the police to initiate investigation and arrest the accused, if necessary.

That apart, it is for the competent court, before which trial would commence, if any, to decide whether the nature of the two FIRs is similar. It is not for this Court, at this juncture, to enter into the merits of such contention.

It is further seen that the statement made by Amit Mondal, one of the eye witnesses, implicates the petitioners as well.

Accordingly, there is no scope of granting anticipatory bail to the petitioners at this stage.

Hence, CRM 10914 of 2020 and CRM 11294 of 2020 are dismissed.

Urgent certified copy of this order, if applied for, be handed over to the parties on the usual undertaking.

(Saugata Bhattacharyya, J.)

(Sabyasachi Bhattacharyya, J.)