PARITY, ROLE AND DIGITAL BLACKMAIL: A CASE COMMENT ON SABITA PAUL V. STATE OF WEST BENGAL (2024 INSC 245)

by

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Case commented on: *Sabita Paul v. State of West Bengal & Anr.*, 2024 INSC 245 (Supreme Court of India, 22 March 2024, Vikram Nath and Sanjay Karol JJ.)

ABSTRACT

In *Sabita Paul v. State of West Bengal*, the Supreme Court restored the anticipatory bail of a mother accused of helping her son blackmail a neighbour with obscene photographs. The High Court had cancelled the bail because she suppressed her earlier failed attempts to obtain it. The Supreme Court did not address the suppression. It reasoned that the principal accused, her son, already enjoyed bail, that her role was only to further his acts, and that parity therefore required equal relief. This comment argues that the decision usefully confirms that parity turns on the role of each accused, but leaves three questions open: the effect of suppression on the exercise of discretion, the assumption that custodial interrogation is unnecessary in a case resting on electronic evidence, and the absence of protective conditions for the complainant.

Keywords: anticipatory bail, parity, role of the accused, suppression of material facts, cancellation of bail, section 67A Information Technology Act, digital extortion

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I. Introduction

Most working rules of bail law are shaped less by Constitution Bench decisions than by short two judge rulings that apply settled principles to ordinary facts. *Sabita Paul v. State of West Bengal* is one of them. It is a non reportable decision of about six pages, yet it states compactly a proposition that trial courts apply daily: parity is not a right, and it is measured by the role of the accused.[2]

The facts add a second interest. The alleged offence involves covertly taken photographs, a threat of circulation on social media and demands for money, a pattern commonly called sextortion. For a scholar of cyber law, the question is whether a bail framework built for physical offences copes when the evidence sits on devices and the harm lasts as long as the images exist. The scale of the problem is rising. The National Crime Records Bureau recorded 52,974 cyber crime cases in 2021 and 86,420 in 2023, an increase of about 63 per cent.[3]

II. Facts and Procedural History

The judgment records allegations only and makes no finding on guilt. On the order of the Judicial Magistrate, Siliguri, FIR No. 438 of 2022 was registered against Supratim Paul and his mother, Sabita Paul. The complainant alleged that Supratim, her neighbour, had photographed her without consent, that the photographs were obscene, and that he threatened to circulate them and demanded money. When she did not pay, he allegedly shared the photographs on his mother's phone, and the mother joined the conspiracy and tried to extort money from the complainant.[4]

The son was charged under sections 376, 354, 389, 506 and 120-B of the Indian Penal Code, 1860. The mother was charged under section 120-B and section 67A of the Information Technology Act, 2000. The son was granted anticipatory bail and that order was not challenged.[5]

The mother's applications were rejected by the Sessions Court and the High Court before the charge sheet. On a fresh application the High Court granted her anticipatory bail on 12 June 2023. On the complainant's application under section 439(2) of the Code of Criminal Procedure, 1973, a Division Bench cancelled the bail on 20 September 2023 because she had

[2] *Sabita Paul v. State of West Bengal*, 2024 INSC 245 (Supreme Court of India, 22 March 2024), arising out of SLP (Crl.) No. 14053 of 2023.

[3] 'NCRB Data On Cyber Crimes Dated, Not Indicative Of True Picture: Experts' (BOOM) <https://www.boomlive.in/news/ncrb-report-notes-sharp-rise-in-cyber-crimes-in-india-29662> accessed 16 November 2026.

[4] *Sabita Paul*, paras 2 and 3.

[5] *Id.*, para 7.

suppressed that her earlier applications had been dismissed. The Supreme Court granted interim protection on 6 November 2023, on condition of cooperation, and it was undisputed that she complied.[6] The appeal therefore arose from the cancellation of a grant already made.

III. Issues and Decision

1. Whether the High Court rightly cancelled bail for suppression of earlier refusals.
2. Whether the mother, charged with conspiracy and under section 67A, was entitled to bail by parity with the principal accused.
3. Whether custodial interrogation was required.

Sanjay Karol J, for the Bench, allowed the appeal and restored the grant of anticipatory bail. The Court recalled the factors collected in *Siddharam Satlingappa Mhetre* and restated in *Dr. Naresh Kumar Mangla*, including the gravity of the accusation, the role of the accused, the risk of flight or tampering, and the balance between a fair investigation and unjustified detention.[7] It found that the mother's act was bound up with her son's: he obtained the photographs and she used them to blackmail. Since the son had been held not to require custodial interrogation, and that order stood, the same applied to her. Bail on parity, the Court said, is not a claim of right, and the court must look at the role attached to the particular accused. The son allegedly began the blackmail and received the money, whereas the mother's role was only to further his acts.[8] The interim condition of cooperation was continued.[9]

The ratio may be stated thus: in applying parity at the stage of anticipatory bail, the court compares the roles attributed to the applicant and to the enlarged co-accused, and where the applicant's role is derivative and custodial interrogation is not warranted, the same relief may follow.

IV. Critical Analysis

A. The unaddressed suppression

The most striking feature of the judgment is its silence on the only ground on which the High Court cancelled bail. The Supreme Court records the ground in its narrative of facts[10] but

[6] *Id.*, paras 4 and 5.
[7] *Id.*, para 6; *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694; *Dr. Naresh Kumar Mangla v. Anita Agarwal*, (2021) 15 SCC 777.
[8] *Sabita Paul*, paras 7 to 9; *Tarun Kumar v. Assistant Director, Directorate of Enforcement*, 2023 SCC OnLine SC 1486.
[9] *Sabita Paul*, paras 10 and 11.
[10] *Sabita Paul*, para 4.

never decides whether the suppression was innocent, immaterial or outweighed by other considerations.

The silence matters. Anticipatory bail is a discretionary relief grounded in liberty,[11] but candour is relevant to discretion, and cancellation is warranted where an order was passed ignoring relevant material.[12] A later court must know what earlier courts decided and why. If the Supreme Court thought the suppression regrettable but insufficient to take away liberty already granted, particularly after the accused had complied with interim conditions for months, it should have said so. A reasoned statement would have guided High Courts on repeated applications. Without one, the decision may be read as suggesting that concealment carries no consequence, a reading the Court probably did not intend. The Court has since stressed candour in bail proceedings. In *Zeba Khan v State of Uttar Pradesh* (11 February 2026) it held that a person seeking bail must give a fair, complete and candid account of material facts, including earlier bail rejections, and described concealment as an abuse of the process of law. It also proposed a disclosure framework for bail applicants, which the judgment describes as recommendatory.[13]

B. Role based parity and characterisation

The insistence on role is sound; a rule that all co-accused must be treated alike would be unworkable. The difficulty lies in characterisation. At the bail stage the Court cannot hold a mini trial and must take the allegations as they stand. Those allegations are that the mother received the images and joined in demanding money. In the law of conspiracy, a person who knowingly joins an extortion scheme is not necessarily less culpable because the idea came from another, and the label "derivative" describes sequence rather than culpability or risk to the complainant.

The better reading is that role was one consideration among several: the charges framed, her standing as a parent, her compliance with interim protection, and the absence of a need for custody. So read, the decision does not hold that a secondary participant in blackmail is entitled to bail as of course. It also borrows its test from *Tarun Kumar*, a decision under a special statute with stringent bail conditions, without noting that parity serves a different function in an ordinary anticipatory bail case. The Court has elsewhere warned against

[11] *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565; *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1.

[12] See *Dolat Ram v. State of Haryana*, (1995) 1 SCC 349.

[13] 'Disclosure of Criminal History in Bail Applications' (Supreme Court Observer, report on *Zeba Khan v State of Uttar Pradesh*, 2026 INSC 144, 11 February 2026) <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/disclosure-of-criminal-history-in-bail-applications/> accessed 16 November 2026.

granting bail on the bare fact that a co-accused was released.[14] The Court returned to the point in *Sagar v State of Uttar Pradesh*, decided on 28 November 2025 by a bench of Sanjay Karol and Nongmeikapam Kotiswar Singh JJ, where it again treated parity as no automatic entitlement and referred to *Sabita Paul* and *Tarun Kumar*.[15]

C. Custodial interrogation and digital evidence

The Court inferred that because the son did not need custodial interrogation, neither did the mother. In image based extortion, however, the investigative questions are technical. Where are the originals stored? Which devices and accounts held copies? Were they forwarded or backed up? The mother's phone was, on the complainant's case, the device on which the images were received and demands made. Forensic imaging does not require arrest, so custody may well be unnecessary, but that is a separate factual question that cannot be assumed from another accused's position, since he may have held different devices and accounts.

The Court might have imposed specific conditions under section 438(2): surrender of the devices used, a bar on deleting or altering data, and access for the investigating officer. The judgment records only continued cooperation. For cyber law, this is a missed chance to link bail with the preservation of electronic evidence.

D. The complainant and continuing harm

The *Mhetre* factors include the risk of threatening the complainant. In intimate image cases the risk is continuing, because the images remain in existence and may be circulated at any time. A bail order should be accompanied by protective directions: no contact, no circulation or retention of the images, and a warning that breach will lead to cancellation. The judgment takes no account of the complainant's apprehension. This criticises the reasoning more than the result, since conditions can protect liberty and the complainant together. Part of the protection now exists outside the bail order. On 11 November 2025 the Ministry of Electronics and Information Technology issued a standard operating procedure under which intermediaries must remove or disable reported non-consensual intimate imagery within 24 hours of a complaint, in line with rule 3(2)(b) of the Information Technology (Intermediary

[14] *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana*, (2021) 6 SCC 230.

[15] 'Bail Cannot Be Granted Solely on Parity With Co-Accused: Supreme Court' (TaxGuru, report on *Sagar v State of Uttar Pradesh*, 2025 INSC 1370) <https://taxguru.in/corporate-law/bail-cannot-granted-solely-parity-accused-supreme-court.html> accessed 16 November 2026.

Guidelines and Digital Media Ethics Code) Rules, 2021.[16] The Court also did not discuss the elements of section 67A, which punishes transmission of sexually explicit material in electronic form,[17] and so did not test how that charge sits with the finding that her role was merely derivative.

V. The New Procedural Code and Precedential Weight

The judgment pre-dates the Bharatiya Nagarik Suraksha Sanhita, 2023, in force from 1 July 2024. Anticipatory bail now falls under section 482 and cancellation under section 483(3), and conspiracy under section 61 of the Bharatiya Nyaya Sanhita, 2023.[18] The principles do not depend on section numbers, and the retained power to impose conditions allows courts to develop standard conditions for cases involving intimate images and electronic evidence. The new section also differs in text from the old one, since section 482 omits the list of guiding factors found in section 438(1) of the Code, which the Chhattisgarh High Court has read as widening the discretion of the court.[19] As a non reportable ruling of two judges applying established law, the decision is best cited as an illustration of the role test, alongside the authorities it applies.

VI. Conclusion

Sabita Paul confirms that parity in bail is comparative and role specific, and it protects the liberty of an accused whose alleged part was ancillary and who complied with interim conditions. It leaves open why suppression was insufficient to sustain cancellation, whether the principal accused's freedom from custodial interrogation extends to a co-accused when the evidence is digital, and how the complainant is to be protected from continuing harm. These are gaps in reasoning, not errors of result, but they will matter as image based extortion cases multiply. A fuller approach would compare roles with reasons, address candour expressly, examine the need for custody against the specific digital evidence, and impose conditions securing both the evidence and the complainant's safety.

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[16] SCC Online Blog, report on the MeitY Standard Operating Procedure of 11 November 2025 on non-consensual intimate imagery <https://www.scconline.com/blog/?p=366432> accessed 16 November 2026.
[17] Information Technology Act, 2000, s. 67A.
[18] Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 482 and 483; Bharatiya Nyaya Sanhita, 2023, s. 61.
[19] 'Section 482 BNSS Widens Scope Of Anticipatory Bail As Compared To Section 438 CrPC: Chhattisgarh High Court' (Verdictum, report on *Parisha Trivedi v State of Chhattisgarh*, 2024 CGHC 37340) <https://www.verdictum.in/court-updates/high-courts/chhattisgarh-high-court-parisha-trivedi-v-state-of-chhattisgarh-2024-cghc-37340-widened-discretionary-power-anticipatory-bail-1552908> accessed 16 November 2026.