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***Calcutta High Court
In the Circuit Bench at Jalpaiguri***

C.R.M. 619 of 2019

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 24.07.2019 in connection with Kotwali P.S. CaseNo.47 of 2019 dated 19.01.2019 under Sections 341/323/325/34 of the Indian Penal Code read with Section 75 of Juvenile Justice (Care & Protection) Act.

In the matter of : Smt. Subhra Pal Dutta.

... Petitioner.

Mr. Sourav Ganguly,
Mr. Arnab Saha.

...for the Petitioner.

Mr. Nilay Chakraborty,
Mr. Sanjiv Das.

.....for the State.

Heard the learned Advocates appearing for the parties.

Pursuant to our earlier order dated 22.08.2019, investigating officer is personally present in Court today. His presence is noted and dispensed with.

Child labour is a blot on the face of Indian democracy. Even after seven decades from the Constitutional pledge to secure social and economic justice to all particularly vulnerable sections of society viz, women and children, we are confronted with the allegation that the petitioner, an educated lady and that too the spouse of a responsible

public functionary had physically abused a minor child belonging to Schedule Tribe community who was employed in her household as a domestic help.

It has been strenuously argued before us that the child had been employed in a non-hazardous employment and her remunerations were duly paid to her maternal uncle as she is a orphan. Best interest of the child had been taken care of by providing her food, clothing and shelter. Incident occurred without premeditation and accidentally the victim suffered head injuries.

Such arguments made on behalf of the petitioner flies in the face of the non-negotiable nature of fundamental right of a minor to life, health, shelter and education. It is a sad day that such rights to the minor are sought to be earned in lieu of employment as a domestic help in the petitioner's household. That apart, materials on record show that the minor was subjected to physical assault by the petitioner resulting in grievous injury and hospitalization in the course of her employment.

Faced with a situation where injuries on the minor had occurred in the course of her employment in the household of the petitioner and in order to show her bonafides and provide adequate compensation for the treatment and care of the injured minor, petitioner has filed an affidavit stating that she is willing to deposit a sum of Rs.2 lakhs with the appropriate authority as compensation to the minor without

prejudice to her rights and contentions in the present proceeding.

Balancing the aforesaid effort in restorative justice on behalf of the petitioner against the gravity of a social crime affecting the life of a minor girl from a vulnerable community, we are of the opinion that the forfeiture of liberty of the petitioner in the facts of the case is not necessary and accordingly she may be granted anticipatory bail.

In the light of the undertaking held out by the petitioner to deposit a sum of Rs.2 lakhs as compensation to the minor child, as aforesaid, we direct that in the event of arrest the petitioner viz., Smt. Subhra Pal Dutta shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, to the satisfaction of the arresting officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on further condition that the petitioner shall appear before the trial court and pray for regular bail within four weeks from date.

In view of the offer made by the petitioner, we further direct that she shall deposit a sum of Rs.2 lakhs in favour of the minor child in a Nationalised Bank within a week from date and the said fund shall be managed and defrayed by the Child Welfare Committee, Cooch Behar as a sponsorship fund for the funding the individual child care plan laid down

by the Child Welfare Committee for the care, protection, education, rehabilitation and treatment of the minor.

Furthermore, as the aforesaid crime causing physical abuse/injury on a minor falls within the category of offences with regard to which compensation may be awarded to the victim under the West Bengal Victim Compensation Scheme, 2017, we direct the State to award a sum of Rs.2 lakhs as interim compensation to the minor. The said sum shall also be managed and defrayed under the direction of the Child Welfare Committee for the care, protection, treatment and education of the minor, who is a orphan.

Member Secretary, State Legal Services Authority as well as the Secretary, High Court, Legal Services Authority (Circuit Bench) shall take appropriate steps for disbursement of the aforesaid interim compensation by the State.

Copy of this order be also sent to the Judicial Secretary, Government of West Bengal, Chair Person, Child Welfare Committee, Cooch Behar, Member Secretary, State Legal Services Authority as well as the Secretary, High Court, Legal Services Authority (Circuit Bench) and the Investigating Officer for necessary action and due compliance.

Let this matter appear six weeks hence for submission of compliance report on behalf of the Chair Person, Child Welfare Committee, Cooch Behar, Member Secretary, State

Legal Services Authority as well as the Secretary, High Court, Legal Services Authority (Circuit Bench).

(Manojit Mandal,J.)

(Joymalya Bagchi, J.)