HIGH COURT OF TRIPURA
AGARTALA

AB No. 113 of 2020

For Petitioner (s)	:	Mr. A. Das, Adv.
For Respondent(s)	:	Mr. R. Datta, P.P.

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Order

04/12/2020

[1] This is an application under section 438 of the Code of Criminal Procedure (Cr.P.C. hereinafter) preferred by the accused petitioner namely Sourav Das @ Joshef seeking pre-arrest bail in Kamalpur P.S. case No. 2019 KMP 091 which was initially registered for offences punishable under sections 365 read with section 109 IPC and after the recovery of the victim girl, section 376(2), IPC and section 6, POCSO Act were added to the case.

[2] Father of the victim (name withheld) lodged the FIR with the Officer in Charge of Kamalpur PS on 11.11.2019 alleging that on 05.11.2019 the accused petitioner forcibly lifted the victim from her way to school where she was a student of class X and thereafter confined her. According to the informant his daughter at that time was a minor.

[3] The case diary reveals that the accused petitioner had taken the victim to Chennai where they lived together for few months.

[4] After the accused petitioner returned to Agartala along with victim, statement of the victim was recorded under section 164(5) Cr.P.C wherein she stated that she developed love affairs with the petitioner and having been convinced that her parents would not accept their relationship she married the accused in a temple and then eloped with him and lived together in Chennai for few months.

[5] In this backdrop of circumstances, petitioner has moved this court for grant of bail in anticipation of arrest.

[6] Heard Mr. A. Das, learned counsel for the petitioner and Mr. R. Datta, learned P.P for the State respondent.

[7] Submission on behalf of the petitioner is that the victim eloped with the accused petitioner on her own volition and even after their return from Chennai, victim preferred to be with the accused at his home. Appearing for the accused petitioner, Mr. Das, learned counsel further submits that the matter has been amicably settled between the parties and in this regard the informant father of the victim had sworn an affidavit before the Notary at Kamalpur on 17.08.2020 which was submitted by the petitioner before this court by way of filing an Additional Affidavit sworn by his mother. It is contended by learned counsel that on appreciation of these facts, petitioner was given interim protection pending disposal of this bail application vide. order dated 21.10.2020 of this court whereby he was enlarged on bail in the event of his arrest till 18.11.2020 and the date was further extended till

03.12.2020. According to Mr. Das, learned counsel, liberty granted to the accused by such interim order was never misused by him. The accused has all along co-operated with the investigation agency. Learned counsel, therefore, urges the court for allowing his petition filed under section 438, Cr.P.C.

[8] Mr. R. Datta, learned P.P., while vehemently opposing the bail application submits that the victim in this case is apparently a minor as per her birth certificate. The accused petitioner had taken her away to Chennai from her way to school by inducement and managed to detain her there for quite a long period of time. It is further contended by learned P.P. that the accused exercised fraud on the innocent girl because he concealed to her that he was already married and having a child. Learned P.P., therefore, submits that unless the accused is arrested and interrogated thoroughly it would not be possible to investigate such a serious offence properly. Moreover, the accused by constantly influencing the witnesses of the case including the victim has seriously impaired the progress of the investigation of the case. Learned P.P., therefore, urges for cancellation of his bail application.

[9] This court in the emerged circumstances perused the case diary. From the birth certificate available in the case diary it appears that the victim girl was born on 26.07.2003. Obviously, she is a minor. Allegedly, the accused by inducement had lifted this minor girl from her way to school and managed to keep her with him for few months in

Chennai where he committed sexual intercourse on her and therefore, a case under sections 376(2), IPC and section 6 of the POCSO Act has been registered against him. The case supervision note of the Deputy Superintendent of Police (Crimes against Women) has revealed that the accused is already married and having a child. But, he concealed the fact to the victim. The case has also revealed that victim was subjected to medical examination on 03.12.2020 and she was found pregnant. Undoubtedly, the petitioner has been accused of a serious offence. The materials available on record prima facie support the prosecution case. Apparently there is a genuine case against the accused.

[10] Usually, the factors which are to be considered while considering a bail application are the nature of the offence and the severity of its punishment, the availability of supporting evidence, likelihood of influencing the witnesses, possibility of securing the presence of the accused during trial, prima facie satisfaction of the court about the accusation and the larger interest of society.

[11] Keeping in mind these considerations and having considered the materials available on record, this court is of the view that prima facie, there is a genuine case against the accused supported by adequate evidence. The accused petitioner seems to have taken a lot of initiatives to pursue the parents of the victim for a settlement of the case which involves a grave offence of kidnapping and sexual assault to a minor girl. The offence is obviously non compoundable in nature. The

very conduct of the petitioner suggests that he has already started influencing the witnesses including the victim. There is, therefore, no doubt that a free and fair investigation would not be possible if the accused is enlarged on pre-arrest bail at his stage.

[12] Consequently, this petition for pre-arrest bail stands rejected and the case is disposed of.

[13] The CD has been returned to learned P.P.

JUDGE

HIGH COURT OF TRIPURA
सत्यमेव जयते

Rudradeep