HIGH COURT OF TRIPURA
AGARTALA

AB No. 133 of 2020.

Shri Rakesh Mahajan and others.

…… *Petitioner(s).*

Vs.

The State of Tripura.

…… *Respondent(s).*

For Applicant(s) : Mr. A. Acharjee, Advocate.

For Respondent(s) : Mr. Ratan Datta, Public Prosecutor.

THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

O R D E R

18/12/2020

[1] This is an application under Section 438 of the Code of Criminal Procedure (Cr. P. C in short) for pre arrest bail to the petitioners in Belonia Women P.S Case No.62 of 2020 which has been registered against the petitioners for having committed offence punishable under Sections 498A and 354 of the Indian Penal Code (IPC in short) and Sections 9,10 and 11 of the Prohibition of Child Marriage Act, 2006 and Section 4 of the Dowry Prohibition Act, 1961 and Sections 4 and 10 of the Protection of Children from Sexual Offences Act, 2012.

[2] Heard Mr. A. Acharjee, learned counsel appearing for the petitioners and Mr. Ratan Datta, learned Public Prosecutor appearing for the State-respondent.

[3] Facts of the case are as under:

Petitioner, Shri Rakesh Mahajan is the husband of the victim, petitioner, Shri Nantu Mahajan is her father-in-law, petitioner, Smt. Sakthi Mahahan is her mother-in-law and Shri Asish Pal, is their neighbour. When the marriage proposal of the victim with petitioner Rakesh Mahajan was finalized and date of solemnization of their marriage was fixed, it was reported by someone to the Sub-Divisional Magistrate that the victim was a minor of the age of 16 years. Immediately thereafter, the SDM appeared in their house along with police staff to restrain the solemnization of their marriage since such marriage was prohibited under the Prohibition of Child Marriage Act, 2006 and asked them to cancel the solemnization of marrage. Despite such order of the Sub-Divisional Magistrate, the petitioners were pursuing the victim and her parents to get the marriage solemnized secretly and assured them that since they were employed in police department nothing would happen. Ultimately, the marriage of the victim with petitioner Rakesh Mahajan was solemnized on 06.07.2019 somewhere near the house of the petitioner and after marriage she accompanied her petitioner husband to his house. In her matrimonial home she was subjected to cruelty and torture by the petitioners and having been unable to bear their torture she left her matrimonial home and

reported the matter to police by lodging a written FIR with the Officer-in-Charge of the Women Police Station at Belonia.

[4] Based on her FIR Belonia Women P.S Case No. 62 of 2020 under Sections under Sections 498A and 354 IPC and Sections 9,10 and 11 of the Prohibition of Child Marriage Act, 2006 and Section 4 of the Dowry Prohibition Act, 1961 and Sections 4 and 10 of the Protection of Children from Sexual Offences Act, 2012 was registered and the investigation was taken up.

[5] Apprehending their arrest in the case the petitioners have moved this application under Section 438 Cr. P.C for pre arrest bail.

[6] Mr. A. Acharjee, learned counsel appearing for the petitioners contend that this is a matrimonial dispute and materials available against the petitioners do not justify their arrest and detention during the investigation of the case. Further submission on the defence is that the petitioners are employed in Government service and their detention even for a single day will jeopardize their career. Learned counsel therefore, urges the Court to allow pre arrest bail to the petitioners.

[7] Mr. Ratan Datta, learned Public Prosecutor on the other hand argues that materials available in the case diary prima facie

support the charges against the petitioners. According to learned Public Prosecutor, there are sufficient materials against the petitioners in support of the charge that they promoted and permitted the solemnization of child marriage which is a serious offence under the Prohibition of Child Marriage Act, 2006, moreover materials available on record also support the charges under the POCSO Act. It is further contended by Mr. Ratan Datta that this is not a fit case for extending the benefit of anticipatory bail to the petitioners and as such, learned Public Prosecutor urges the Court to reject their bail application.

[8] There is no doubt that accusations against the petitioners are serious. Petitioner Rakesh Mahajan allegedly married the victim who was a child at that time defying the order of the Sub-Divisional Magistrate and after the marriage she was taken to their house where she was subjected to sexual intercourse, cruelty and torture, as a result of which the victim returned to her parents.

[9] Power under Section 438 Cr. P.C is extraordinary in nature. Such power can be exercised with a view to prevent unreasonable arrest and harassment. Here in this case the petitioners are charged with serious offence and materials available against them prima facie support those charges.

[10] In view of the above, the application for bail stands rejected.

[11] It is clarified that the above observations are made for the limited purpose of deciding this bail application. None of the observations made in this judgment & order shall be treated as observations as to the merit of the case and such observations will have no bearing on any bail application at any stage and/or on the trial of the case.

The case is disposed of. Return the case diary.

JUDGE

Dipankar

HIGH COURT OF TRIPURA
सत्यमेव जयते