

04.10.2021
Serial no. 56
Aloke
Ct. No. 29

(Through Video Conference)

CRM 3474 of 2021

In re : An Application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 20.04.2021 in connection with Naihati Police Station Case No. 355 of 2020 dated 16.08.2020 under Sections 498A/304b/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

-And-

In the matter of: Ratna Konai & Anr.

... Petitioners

Mr. Kaustav Das, Advocate

... ... For the Petitioners

Mr. Arijit Ganguly, Advocate

Mr. Avik Ghatak, Advocate

... ... For the State

Petitioner seeks anticipatory bail.

Learned advocate appearing for the petitioner submits that on the previous occasion, the application for grant of anticipatory bail was not pressed on behalf of the petitioners on the erroneous ground that there existed an order to proclamation of arrest. He relies upon the order dated February 18, 2019 passed in CRM 1816 of 2019 (**In re: Rajib Ghosh & Ors.**), the judgment reported in (2019) C Cr. LR (Cal) 423 (**In re: Saidul Islam Mondal @ Saidul Islam**) and the judgment of the Calcutta High Court in CRM 13588 of 2013 (**In re: Sambhu Halder**) in support of the contention that where proclamation of arrest was issued by the trial court without being satisfied whether warrant of arrest was served on the accused or the accused dodged service, the same does not impeach upon the right of the petitioner to seek anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973.

State is represented.

Learned Advocate appearing for the State draws the attention of the Court to the contents of the case diary. He submits that the husband is on bail. Police submitted charge-sheet. He also submits that there is warrant of arrest issued by the jurisdictional court against the petitioners.

Learned Advocate appearing for the petitioners draws the attention of the Court to the orders of the jurisdictional court. He submits that the prerequisite for issuance of a proclamation of arrest was not complied with. The order is a non-speaking order.

The police concluded investigation and submitted charge-sheet. The principal accused being the husband was granted bail by the jurisdictional court. Proclamation of arrest was prayed for and allowed by the jurisdictional court on November 4, 2020 against the petitioners. The order dated November 4, 2020 of the jurisdictional court is non-speaking.

In view of the ratio laid down in **Saidul Islam Mondal @ Saidul Islam (supra)**, **Rajib Ghosh & Ors. (supra)** and **Sambhu Halder (supra)**, we are of the view that the existence of the order dated November 4, 2020 directing issuance of proclamation of arrest against the petitioners is no impediment of granting anticipatory bail to the petitioners as such order stands vitiated. It is non-speaking.

Considering that the police submitted charge-sheet and that the husband of the victim is on bail, we are inclined to grant anticipatory bail to the petitioners.

Accordingly, we direct that in the event of arrest, the petitioners shall be released on anticipatory bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand Only) each, 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 petitioners shall appear before the jurisdictional court and pray for regular bail within four weeks from date and with a further condition that the petitioners shall appear before the jurisdictional court on every date fixed for hearing.

The prayer for anticipatory bail is allowed.

CRM 3474 of 2021 is disposed of.

(Debangsu Basak, J.)

(Ananda Kumar Mukherjee, J.)