

CRM 5617 of 2021
(via video conference)

Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure.

In the matter of : **Faraz Ali Midda @ Suman**

..... petitioner

Mr. Debjit Mukherjee
Ms. S. Chatterjee
Mr. Kaustav Bhattacharya

.....For the petitioner

Mr. Nirupam Dhali

.....For the State

In the instant application Mr. Debjit Mukherjee, learned lawyer appearing for the petitioner apprehends arrest in connection with Dhaniakhali Police Station Case No. 143 of 2021 dated 27.06.2021 under Sections 417/376/506 of the Indian Penal Code.

Mr. Mukherjee submitted that the allegation is false and frivolous. There are no incriminating material against the present petitioner. The relationship between the petitioner and the victim, if any, was based on mutual consent. According to Mr. Mukherjee, custodial detention is not necessary for which anticipatory bail should be granted.

Per contra, Mr. Nirupam Dhali, learned lawyer appearing for the State submitted that there are incriminating materials in the case diary showing that the present petitioner had a relationship with the victim lady, who is in the relationship with aunty with the petitioner. investigation is still pending.

Therefore, the present petitioner should not be allowed anticipatory bail.

We have heard rival submissions and perused the case diary. On perusal of the statement of the victim recorded under Sections 164 and 161 of the Code of Criminal Procedure, it appears that when the relationship between the petitioner and the victim lady developed, she was still married. Subsequently, she refused medical examination.

It appears that Talaknama was executed on 25.06.2021 and on 27.06.2021, a written complaint was filed. From the statement of the victim girl, it also appears *prima facie* that there was consent between the parties, although at this stage, we should not pre-judge the matter and form a definite opinion in this regard.

However, on perusal of the case diary and other materials, it appears to us that custodial detention in this case is not necessary and we are inclined to grant anticipatory bail to the present petitioner, namely, **Faraz Ali Midda @ Suman** on furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, the satisfaction of the Arresting Officer and on further condition that the petitioner shall meet the Investigating Officer once in a week till the investigation is pending and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973.

It is further directed that the petitioner shall not tamper with the evidence and/or intimidate the witnesses. He shall

also attend learned Court below on all the dates, as specified for hearing.

In the event the petitioner fails to comply with the aforesaid directions, without any justifiable cause, the learned Court below shall be at liberty to cancel his bail, in accordance with law, without further reference to this Court.

The application for anticipatory bail, being CRM 5617 of 2021, is, thus, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)