

17.11.2021

CRM 7111 of 2021

court no. : 28
Item no. : PB-13
matter : 438
status : ALLOWED
transcriber : nandy

In Re:- An application for **Anticipatory Bail** under Section **438** of the Code of Criminal Procedure filed on 25.10.2021 in connection with Pursurah Police Station Case No. 80 of 2021 dated 13.06.2021 under Sections 325/326/307/302/506/34 of the Indian Penal Code. (G.R. Case No. 737 of 2021)

and

In the matter of: **Sk. Mahammad Rafik**

.....Petitioner

Mr. Niladri Sekhar Ghosh, Advocate

.....for the Petitioner

Mr. Madhusudan Sur, Advocate

Ms. Sujata Das, Advocate

.....for the State

Mr. Avik Ghatak, Advocate

Mr. Saibal Krishna Dasgupta, Advocate

.....for the de facto complainant

Apprehending arrest in connection with in connection with Pursurah Police Station Case No. 80 of 2021 dated 13.06.2021 under Sections 325/326/307/302/506/34 of the Indian Penal Code, the petitioner has filed the instant application for anticipatory bail.

Learned Advocate for the petitioner submits that the name of the petitioner was neither disclosed nor divulged by any witnesses in connection with the aforementioned case except after the statement of the so called injured person recorded, one and half months of the alleged incident that too on the basis of a complaint made by his mother. It is submitted that the petitioner has been subsequently entangled in the instant case out of vengeance and police is intending to arrest him. It is submitted that the name of the petitioner was

divulged by one eyewitness namely Mirham, and, therefore, there is a direct role ascribed to the conduct of the petitioner in the commission of an offence.

Learned Advocate of the de facto complainant submits that the petitioner is roaming around in the locality perpetrating threat upon the villagers not to give evidence in connection with the aforementioned case and several complaint has been lodged with the local police station not only by the individual but the local committee.

After hearing the learned Advocates for the parties and upon perusal of materials-on-record it transpires that the statement of the so called eyewitness, namely Mirhan, was recorded one and half months of the alleged incident that too on the basis of a complaint made by his mother. Though the name of the petitioner has been disclosed but there is considerable doubt on the veracity of the statement which in our opinion has to withstand at the time of trial. We are amazed, if Mirhan has suffered injury in the same incident and was treated in the hospital along with other eyewitnesses, why there has been a considerable delay in recording his statement after one and half months, that too on the basis of a complaint lodged by his mother. However, we are not unmindful of the fact that if the petitioner is perpetrating threat, the same can be taken care of by putting stringent conditions.

Since we do not find any justification in not extending the benefit of Section 438 of the Code of Criminal Procedure to

the petitioner, the prayer for anticipatory bail is **allowed**.

Accordingly, in the event of arrest the petitioner namely, **Sk. Mahammad Rafik**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the arresting officer, on condition as laid down under Section 438(2) of the Code of Criminal Procedure and on further condition that the petitioner shall not enter into the jurisdiction of the concerned police station till the completion of the case except for attending the court case on the date of its listing. The petitioner shall disclose the place of his abode where he shall be living in future to the Inspectors-in-charge of both the police stations.

The application for anticipatory bail being **CRM 7111 of 2021** is thus **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)