

**18.11.2021**

**Sl. No. 35**

Court No.29

BM

**CRM 7399 of 2021**

**(Via Video Conference)**

In Re: An application for Anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 in connection with Ratua P.S. case No.465 of 2021 dated 06.09.2021(Corresponding G.R No.2098/2021) under Section 376 of the Indian Penal Code.

And

**In the matter of: Sahajahan Ali @ Sk. Sahajahan @ Sahajahan Sekh @ Sajahan Sekh**

**... Petitioner**

Mr. K. Bagchi

Mr. A. Sarkar

... for the petitioner

Mr. Tanmoy Kumar Ghosh

Mr. Sonali Bhar

... for the State

The petitioner is apprehending arrest in connection with Ratua Police Station case No.465 of 2021 dated 06.09.2021 corresponding to G.R No.2098/2021 under Section 376 of the Indian Penal Code. It is pointed out by the learned advocate for the petitioner that the case has been started on the basis of an application under Section 156(3) of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate, Chanchal, Malda on 26.08.2021 whereas the offence allegedly committed on 28.07.2020. Thus, it is submitted that there is delay in filing the FIR without any explanation in the application under Section 156 (3) of the Code of Criminal Procedure.

Apart from that it is further pointed out by learned Advocate for the petitioner that the application under Section 156 (3) Cr.P.C. does not reflect compliance of Section 154 (1) and Section 154 (3) of Code of Criminal Procedure. It is submitted that the complainant is a

tenant in the house of the FIR named accused and there is a landlord tenant dispute between them, accordingly, it is urged that a false charge has been foisted against the petitioner.

Learned Advocate for the State submits that investigation is going on and pressed in service the case diary.

Upon hearing learned Advocates for the petitioner and State and on perusal of the case diary it appears that case has been started on the basis of an application under Section 156 (3) Cr.P.C. which is defective as the parameter provided by the Hon'ble Supreme Court in Priyanka Srivastava's case has not been complied as the petition is not supported by any affidavit.

Ergo, we are inclined to admit the petitioner on anticipatory bail.

In the event of arrest the petitioner may be admitted on bail in the event of arrest upon furnishing bond of Rs.10,000/- with two sureties of like amount, one of whom has to be local to the satisfaction of the arresting Officer, subject to condition under Section 438(2) of the Code of Criminal Procedure on further condition that the petitioner shall cooperate in the Investigating Officer.

The Application for anticipatory bail being CRM 7399 of 2021 is, thus, allowed.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

**(Ananda Kumar Mukherjee, J.)**

**( Shivakant Prasad, J.)**