

17.08.2021.
16.
As/Akd
(Allowed)

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION**

**C.R.M. 780 of 2021
(Via Video Conference)**

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Maynaguri P.S. Case No.314 of 2021 dated 15.06.2021 under Section 313 of the Indian Penal Code read with Section 4 of the POCSO Act.

In the matter of : Hiranmoy Roy @ Hiranmay Roy.
... Petitioner.

Mr. Anirban Banerjee.
.....for the Petitioner.

Mr. Aditi Shankar Chakraborty, Id. A.P.P.,
Mr. Ujjal Luksom,
Mr. Biswarup Roy.
.....for the State.

At the very outset, it is submitted by the learned Advocate for the petitioner that in the preamble of the said application subsequently added provision of Section 4 of the POCSO Act and has not been incorporated which, in fact, has been incorporated in course of the investigation and, therefore, the same should be treated to have been part of the preamble.

The Advocate-on-record of the petitioner undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking, the application is taken up for hearing.

Apprehending arrest in connection with Maynaguri P.S. Case No.314 of 2021 dated 15.06.2021 under Section 313 of the Indian Penal Code read with Section 4 of the POCSO Act, the petitioner has filed the instant application for anticipatory bail.

It is submitted on behalf of the petitioner that there was a love relationship between the petitioner and the victim girl and she voluntarily left her paternal home with the petitioner and stayed in his house only for a night. On the next day, she was recovered.

It is also submitted that there is no allegation of sexual assault upon her by the petitioner. Therefore, he should be released on anticipatory bail.

Learned Public Prosecutor has raised objection against the prayer for anticipatory bail on production of Case Diary. We have carefully perused the same.

It is found from the statement made by the victim girl recorded under Section 164 of the Code of Criminal Procedure that there was a long standing relationship between the parties. The victim went to the house of the petitioner voluntarily with him and stayed there for a night. In her statement under Section 164 of the Code of Criminal Procedure, she did not make any allegation of commission of sexual assault against the petitioner. The medical report also does not suggest any such act immediately on the date of her missing.

Considering all such aspect of the matter, we are of the view that the petitioner should be granted benefit of Section 438 of the Code of Criminal Procedure.

Hence, the application for anticipatory bail is, thus, allowed.

Accordingly, we direct that in the event of arrest the petitioner shall be released on anticipatory bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local subject to the satisfaction of the arresting officer and on condition that he shall meet the Investigating Officer once in a week and as and

when called for until further orders and on further conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973.

Default without any plausible reason on a solitary occasion to appear before the Investigating Officer may entitle the prosecution to apply for cancellation of the liberty granted in this order and if such approach is made, the concerned Court would decide the same independently without any further reference to this Court.

The application for anticipatory bail, being CRM 780 of 2021, is thus disposed of.

(Harish Tandon, J.)

(Bibek Chaudhuri, J.)