

CRM(A) No.202 of 2022

Via video conference

08.02.22

(S.R.)

Sl.18

Ct.32

In re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Ratua** Police Station Case No.521 of 2011 dated 18/12/2011 under Sections 376/365/109/506 of the Indian Penal Code (G.R. Case No.4698 of 2011);

And

In re: Serajul Hoque @ Serajul Islam

... petitioner.

Mr. Kazi M. Rahman

... for the petitioner.

Ms. Faira Hossain

Ms. Sonali Das

...for the State.

Mr. Rahman, learned advocate appearing for the petitioner submitted that the present petitioner, who is aged about 76 years, is falsely implicated in this case. He is not the principal accused. The principal accused has already been granted bail by the learned court below. The present petitioner only allegedly accompanied the principal accused. So, there is no ingredient of Section 376 of the Code against the present petitioner. The allegation was lodged in the year 2011 and charge sheet has been filed in the year 2012. The petitioner was not aware of any prosecution case. Therefore, the petitioner was not able to surrender and take regular bail. The petitioner only came to know of the persecution recently and moved this application. According to Mr. Rahman, custodial detention is not necessary since the charge sheet has been filed. Accordingly, anticipatory bail is prayed for,

Per contra, Ms. Das, learned advocate appearing for the State submitted that the present petitioner has complicity in the alleged crime and the written complaint itself indicates that. However, in our query, Ms. Das submitted that neither any medical report is there nor any statement of the victim recorded either under Sections 161 or under Section 164 of the Code of Criminal Procedure. However, in the

report of the investigating officer, gist of the medical report is mentioned. Accordingly she strongly opposes the anticipatory bail on the ground that the petitioner is absconding.

We have heard the rival submissions and perused the case diary and other materials. First, it comes to our notice from the annexure that the learned District Judge was annoyed when LCR was not available for proper appreciation of the case. We have also seen the written complaint. No statement of the victim is recorded to corroborate the written complaint. No medical report is there. It is astonishing that even when the charge sheet was filed in the year 2012 and till today no medical report is available to ascertain allegation of rape. Statements of some of the witnesses indicate that the present petitioner helped the principal accused. Answering our query, Ms. Das submitted that no proclamation order has yet been issued. On perusal of the case diary and other materials, we find that the case is 10 years old and charge sheet has been filed in the year 2012. There is no justification in custodial detention, as the charge sheet has been filed. Considering the materials available on record and the extent of complicity of the present petitioner in the alleged offence who is not the principal accused, we are inclined to allow the anticipatory bail to the present petitioner.

Accordingly, we direct that in the event of arrest the petitioner will be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, 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 with a further condition that the petitioner shall attend the

learned trial court on all the dates as specified for hearing.

It is further directed that the petitioner shall not intimidate the witnesses or tamper with evidence in any manner whatsoever.

It is made clear that in the event the petitioner fails to comply with the aforesaid directions without any justifiable cause, the learned trial court would be at liberty to cancel his bail without any further reference to this Court.

The application for anticipatory bail being CRM(A) No.202 of 2022 is, accordingly, 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.)