

17.03.2022
Item no.128
Court No.32
Avijit Mitra

C.R.M.(A) 619 of 2022

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with Hemtabad Police Station Case No.291 of 2021 dated 31.10.2021 under Sections 376/506 of the Indian Penal Code;
And

In Re : Mojarul Islam @ Majarul Haque

.... petitioner

Mr. Shaharayar Alam

....for the petitioner

Mr. Arijit Ganguly,
Mr. Avik Ghatak

...for the State

Heard the learned lawyer for the Petitioner and perused the case diary. The instant complaint is lodged after a lapse of 33 days.

Learned lawyer for the petitioner submitted that the present petitioner is falsely implicated in this case as a consequence of a land dispute between the parties. Custodial interrogation is not necessary. Accordingly, he prays that the present petitioner may be granted anticipatory bail.

Per contra, Mr. Ganguly, learned lawyer appearing for the State submitted that Charge Sheet has been filed and the victim refused medical examination but she submitted in the statement as recorded under Section 164 of the Code of Criminal Procedure clearly that the present petitioner ravished her. Accordingly, he strongly opposed the anticipatory bail.

We find contradictory statements of the victim and other witnesses, as recorded under Section 164 of the Code. There is no recording of statements of the victim and other witnesses under Section 161 of the Code of Criminal Procedure. Victim refused medical examination. Statements of other witnesses show that there was a land dispute between the parties.

On perusal of case diary and other materials and considering the fact that chargesheet has been filed and further that no proclamation is issued against the present petitioner, we are inclined to allow the anticipatory bail.

Accordingly, we direct that in the event of arrest, the petitioner namely, **Mojarul Islam @ Majarul Haque**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only) with two sureties of like amount each, 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 not enter the jurisdiction of Hemtabad Police Station till further orders and he shall intimate the address where he would be residing to the Inspector-in-Charge, Hemtabad Police Station.

The petitioner shall attend the learned Trial Court on all the dates as specified for hearing.

The petitioner shall not intimidate the witnesses and/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 the petitioner's bail without any further reference to this Court.

Accordingly, the application for anticipatory bail being C.R.M.(A) 619 of 2022 is 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.)