

CRM (A) 705 of 2022
(via video conference)

Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure.

In the matter of : **Jabul Sekh**

..... petitioner

Mr. Asraf Mandal

.....For the petitioner

Mr. Abhra Mukherjee
Mr. Dipankar Mahata

.....For the State

Apprehending arrest in connection with Tehatta Police Station Case No. 442 of 2021 dated 31.08.2021 under Sections 448/376/506 of the Indian Penal Code, the present application has been preferred.

Mr. Mandal, Learned Lawyer appearing for the petitioner submitted that the present petitioner is falsely roped in this case. The Complainant is the second wife of the present Petitioner which fact is suppressed in the written complaint. The allegation of rape is only a fabrication by the Petitioner. Custodial detention in this case is not necessary. Accordingly, he prays for anticipatory bail.

Mr. Mukherjee, Learned Lawyer appearing for the State invited our attention to the statement of the victim recorded under Sections 164 and 161 of the Cr.P.C. and submitted that the victim consistently stated that she was raped by the present Petitioner. Allegation is very strong for which

custodial detention may be necessary. Accordingly, he opposed the anticipatory bail. However, he could not deny the presence of marriage certificate in the case diary showing marriage between the present Petitioner and the *de facto* Complainant.

We have heard rival submissions. Perused the case diary.

Case diary reveals that the present Petitioner and the *de facto* complainant are husband and wife and their marriage was registered on 8th June, 2021. We also noticed that the victim in her statement recorded under Section 164 of the Cr.P.C. on 3rd September, 2021 stated that she could not remember date or day of the alleged incident, whereas in the statement recorded under Section 161 of the Cr.P.C. on 31st August, 2021, i.e., a couple of days prior, she stated the date, i.e. 20th May, 2021. The statement of the victim is absolutely silent on marriage. No medical report is there as the victim refused medical examination.

Considering the extent of incriminating materials, complicity of the present Petitioner, we are inclined to allow anticipatory bail and direct that in the event of arrest the petitioner, namely, **Jabul Sekh** shall 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

during pendency of the investigation, he will not enter into the jurisdiction of Tehatta Police Station save and except for meeting with the Investigating Officer once a week till investigation is complete.

It is further directed that the petitioner shall not tamper with the evidence and/or intimidate the witnesses. He shall also attend learned Court below on all the dates, as specified for hearing.

In the event the petitioner fails to comply with the aforesaid directions, without any justifiable cause, the learned Court below shall be at liberty to cancel his bail, in accordance with law, without further reference to this Court.

The application for anticipatory bail, being CRM (A) 705 of 2022, is, thus, 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.)