

11.03.2022

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Ct. No. 29

KAUSHIK

Allowed

C.R.M.(A) 1177 of 2022

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Chanchal** Police Station Case No. **578** of **2020** dated **16.07.2020** under Sections 498A/323/325/376/313/34 of the Indian Penal Code, 1860.

And

In Re : Sk. Aftab Alam & Anr.

..... petitioners

Ms. Minoti Gomes

Mr. Debayan Ghosh

Mr. Arup Sarkar

....for the petitioners

Mr. Bidyut Kumar Roy

Ms. Kumkum Mitra

....for the State

Petitioners seek anticipatory bail.

Learned advocate appearing for the petitioners submits that, the de-facto complainant approached the Court under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.) on June 13, 2020. The First Information Report (FIR) was lodged on July 16, 2020. The de-facto complainant recorded a statement under Section 161 of the Cr.P.C. on July 17, 2020, where she does not allege rape. It is only in a statement recorded under Section 164 of the Cr.P.C. on November 17, 2020 that the de-facto complainant alleged rape for the first time. She submits that the de-facto complainant lost the child

due to medical condition and that there was no forceful abortion.

Learned advocate appearing for the State draws the attention of the Court to the injury report of the de-facto complainant.

On perusal of the case diary, we find that possibility of the de-facto complainant undergoing abortion due to her severe anemic condition cannot be discounted. The de-facto complainant in a statement recorded under Section 161 of the Cr.P.C. on July 17, 2020 does not refer to any incident of rape. It is only in the statement recorded under Section 164 of the Cr.P.C., where the incident of rape is introduced.

Considering the time gap between the lodgment of the FIR and her statement recorded under Section 164 of the Cr.P.C., where the de-facto complainant introduces the incident of rape for the first time and considering the medical evidence presently available in the case diary which suggests that the de-facto complainant lost the baby in her womb due to her own medical condition and considering the fact that the police filed charge-sheet, we grant anticipatory bail to the petitioners.

Accordingly, we direct that in the event of arrest the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- each, with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of

Criminal Procedure, 1973 and on condition that the petitioners shall appear before the jurisdictional court on every date fixed and pray for regular bail within a period of four weeks from date.

This application for anticipatory bail is, thus, allowed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)