

25.01.2022

Court No.32
rpan/34

C.R.M. 8806 of 2021

[Through Video Conferencing]

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure;

And

In re: **Ajijur Sarkar & Another**

- Petitioners

Mr. Kaushik Chaudhury,

Ms. Bursa Khatun

... for the Petitioners.

Mr. Saibal Bapuli,

Mr. Aniket Mitra

... for the State.

Apprehending arrest in connection with Tapan Police Station Case No.239 of 2021 dated 01.08.2021 under Section 363 of the Indian Penal Code [Charge-sheet no.336 of 2021 dated 13.10.2021 submitted under Sections 363/365 of the Indian Penal Code, 1860 and Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 4 of the Protection of Children from Sexual Offences Act, 2012], the petitioners have filed the present application.

Mr. Chaudhury, learned advocate appearing for the petitioners submits that the petitioners are aged persons and are the parents of the principal accused, namely, Sahin Sarkar @ Rahul. Upon completion of investigation charge sheet has also been submitted. The ingredients of Section 4 of the POCSO Act are not attracted against them. As such, custodial interrogation is not necessary.

Mr. Mitra, learned advocate appearing for the State opposes the petitioners' prayer and draws our attention to the statement of the victim girl, as recorded under Section 164 of the Code and the statements of other witnesses, as recorded under Section 161 of the Code.

Answering a query of this Court, Mr. Mitra submits that the victim girl has been recovered and the principal accused, namely, Sahin Sarkar @ Rahul has already been arrested.

Having heard the learned advocates and considering the materials in the case diary, the nature of accusations and the extent of complicity of the petitioners in the alleged offence, we are of the opinion that their custodial interrogation is not warranted, more so when, upon completion of investigation, charge sheet has already been filed and since *prima facie*, there is also no possibility that they would flee from justice. As such, their prayer for anticipatory bail is allowed.

Accordingly, in the event of arrest the petitioners, namely, **Ajijur Sarkar** and **Sahanaj Sarkar @ Bibi** shall be released on bail upon furnishing a bond of Rs.10,000/- each 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.

It is further directed that the petitioners shall attend the learned court below on all the dates specified for hearing and shall not tamper with the evidence and/or intimidate the witnesses in any manner whatsoever.

In the event the petitioners fail to comply with the aforesaid directions, without any justifiable cause, the learned court below

shall be at liberty to cancel their bail, in accordance with law, without further reference to this Court.

The application for anticipatory bail, being CRM No. 8806 of 2021, is, thus, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Kesang Doma Bhutia, J.)

(Tapabrata Chakraborty, J.)