

02.03.2022

COURT : 01  
ITEM : 33  
MATTER : 438  
STATUS : ALLOWED  
TRANSCRIBER : Saswata

**CIRCUIT BENCH OF CALCUTTA HIGH COURT  
AT JALPAIGURI**

**CRM (A) 60 of 2022**

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed in connection with Mekhliganj Police Station Case No. 194/2020 dated 02/07/2020 under Sections 302/201/120B of the Indian Penal Code.

And

In the matter of : **Md. Asraful Ali @ Asraful Md.**

...Petitioner

Md. Jeenia Rudra

...for the Petitioner

Mr. Nilay Chakraborty

Mr. Biswarup Roy

...for the State

Apprehending arrest, the petitioner has filed the instant application for anticipatory bail in connection with Mekhliganj Police Station Case No. 194/2020 under Sections 302/201/120B of the Indian Penal Code.

This is a second application at the behest of the petitioner. The earlier application being CRM 125 of 2021 was rejected on 18/02/2021.

We had an occasion to peruse the findings recorded in the said order. The anticipatory bail was rejected on the basis of the statement made by the witness, placed in the case diary, leading to submission of charge sheet under Sections 302/201/120B of the Indian Penal Code. Obviously, the gravity of the offence was one of the concern to the earlier Coordinate Bench.

It has been pointed out by the learned advocate for the petitioner that such recording is not in tune with the actual state of affairs. According to her, on the said date, when the first application was rejected, she was not aware on what charging sections the charge sheet had been filed against the petitioner. Subsequently, she came to know that the charge sheet does not contain the charging Sections like Section 302 of the Indian Penal Code but in fact, it has been filed under Section 306 of the Indian Penal Code.

We enquired from the learned advocate for the State whether the statement of the petitioner is correct or not. Our attention is

drawn to the charge sheet submitted by the Investigating Officer, wherefrom it appears that the same was filed under Sections 306/120B of the Indian Penal Code. We, thus, find that the recording of the facts in the earlier order are contrary to the record and, therefore, the same may not stand in the way of considering the application on merit.

The moment the charge sheet is filed under Section 306 of the Indian Penal Code, it excludes the direct complicity of the petitioner to the commission of an offence under Section 302 of the Indian Penal Code. It is a matter of evidence to be produced by the prosecution side involving the petitioner in committing the offence under Section 306 of the Indian Penal Code.

Since, the charge sheet has already been submitted, we do not think that there is any necessity for custodial interrogation of the petitioner.

As such, the prayer for anticipatory bail is ***allowed***.

Accordingly, in the event of arrest the petitioner namely **Md. Asraful Ali @ Asraful Md.** 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 on further condition as enshrined under Section 438(2) of the Code of Criminal Procedure and on further condition that the petitioner shall meet the Inspector-in-Charge of Mekhliganj Police Station twice in a week.

The application being CRM (A) 60 of 2022 is accordingly disposed of.

**(Harish Tandon, J)**

**(Rabindranath Samanta, J)**