

02.03.2022

COURT : 01
ITEM : 40
MATTER : 438
STATUS : ALLOWED
TRANSCRIBER : nandy

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

CRM (A) 69 of 2022

In Re:- An application for **anticipatory bail** under section **438** of the Code of Criminal Procedure filed on January 24, 2022 in connection with Falakata Police Station Case No. 03 of 2022 dated 02.01.2022 under Sections 376/323/506/34 of the Indian Penal Code. (G.R. Case No. 5854 of 2021)

And

In the matter of : **Swapan Roy & Ors.**

...Petitioners

Mr. Hillol Saha Poddar, Advocate
Mr. Sayantan Bhowmik, Advocate

...for the Petitioners

Mr. Kallol Acharjee, Advocate
Ms. Namrata Das, Advocate

...for the State

Apprehending arrest in connection with Falakata Police Station Case No. 03 of 2022 dated 02.01.2022 under Sections 376/323/506/34 of the Indian Penal Code; the petitioners have filed the instant application for anticipatory bail.

The aforesaid case has been lodged on a complaint of the victim lady alleging rape and sexual assault. She narrated the incident to her husband, who remained absent from the house because of his avocation as a driver, and immediately thereafter, the FIR was lodged.

According to the learned Advocate of the petitioners, all of them had been falsely implicated in connection with the aforementioned case. The victim lady had an extra-marital affair with the petitioner no. 1, who subsequently changed her mind and inflicted the aforesaid case against the petitioners.

After hearing the submissions of the respective Counsel and on perusal of the materials-on-record from the case diary

including the statement of the victim lady recorded under Section 164 of the Code of Criminal Procedure we find that there is no allegation against the petitioner nos. 2 and 3 with regard to the commission of an offence under the aforesaid charging sections. We thus are inclined to extend the benefit of Section 438 of the Code of Criminal Procedure to the petitioner nos. 2 and 3.

However, since serious allegations have been levelled against the petitioner no. 1, we feel that custodial interrogation of the petitioner no. 1 is necessary in order to ascertain his complicity in the commission of an offence. Therefore, the prayer for anticipatory bail in respect of **petitioner no. 1**, namely Swapan Roy, is **rejected**.

The prayer for anticipatory bail is **allowed** in respect of **petitioner nos. 2 and 3**.

Accordingly, in the event of arrest the petitioner nos. 2 and 3, namely **Jay Roy @ Joy Roy & Swapna Roy**, respectively, shall be released on bail upon furnishing a bond of Rs.10,000/- each, with two registered sureties of Rs.5,000/- each, to the satisfaction of the arresting officer and on condition as enshrined under Section 438(2) of the Code of Criminal Procedure and on further condition that the petitioners shall meet the Investigating Officer as and when called for.

The application being **CRM (A) 69 of 2022** is accordingly **disposed of**.

(Harish Tandon, J)

(Rabindranath Samanta, J)