

02.03.2022

COURT : 01
ITEM : 42
MATTER : 438
STATUS : ALLOWED
TRANSCRIBER : nandy

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

CRM (A) 72 of 2022

In Re:- An application for **anticipatory bail** under section **438** of the Code of Criminal Procedure filed on January 25, 2022 in connection with Nagrakata Police Station Case No. 163 of 2021 dated 17.12.2021 under Sections 498A/494/307 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act.

And

In the matter of: **Ramesh Kami**

...Petitioner

Mr. Debajit Kundu, Advocate

...for the Petitioner

Mr. Ujjwal Luksom, Advocate

Mr. Biswarup Roy, Advocate

...for the State

Apprehending arrest in connection with Nagrakata Police Station Case No. 163 of 2021 dated 17.12.2021 under Sections 498A/494/307 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act; the petitioner has filed the instant application for anticipatory bail.

According to the learned advocate of the petitioner, the *de facto* complainant who is the wife of the petitioner, left matrimonial home voluntarily and subsequently lodged a complaint against the petitioner and his family members. It is further submitted that other family members have been granted anticipatory bail by the court below.

The State opposes the prayer for bail. It is submitted that the victim lady has disclosed the offence having committed by the petitioner and the other co-accused not only under Section 498A but also under Section 307 of the Indian Penal Code, in her statement under Section 164 of the Code of Criminal Procedure.

We have perused the statement of the victim lady recorded

under Section 164 of the Code of Criminal Procedure wherein she has disclosed various misdeeds of the family members of the petitioner including the petitioner and further stated that she was mentally and physically tortured by them. There is no medical report annexed to the case diary. We are informed that no medical examination has been conducted.

Section 307 of the Indian Penal Code was included solely on the statement of the victim lady relating to physical and mental torture. We are conscious of the proposition of law that it is not essential under Section 307 of the Indian Penal Code that bodily injury causing death should have been inflicted. It is sufficient if there is an imminent intent coupled with some overt act in execution thereof having presumed to the crime intended and if such attempt goes so far to render it complete, the intention of an attempt is paramount even in absence of accomplished crime.

The role of the Investigating Officer is an important facet of the investigation in pursuit of the crime having committed under the relevant provision. The casual and careless manner of registering an FIR when the basic ingredients of a particular Section are conspicuously absent, should not be encouraged. Recently the trend has developed in relation to a matrimonial offences to incorporate the stringent provisions of law even if there is no element found from the statement of the victim lady. Such attempt is designed to dilute and/or whittle down the mandatory requirement of serving a notice under Section 41A of the Code in a case pertaining to the alleged offence under Section 498A of the Indian Penal Code. Such Investigating Officer should be reprimanded and the senior officials must take appropriate step against him.

Since we do not find any material pertaining to Section 307 of the Indian Penal Code, we are inclined to grant anticipatory bail to the petitioner.

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

Accordingly, in the event of arrest the petitioner namely **Ramesh Kami** shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of Rs.5,000/- each, one of whom must be local 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 petitioner shall cooperate with the Investigating Officer.

The application being **CRM (A) 72 of 2022** is accordingly **disposed of**.

Let a copy of this order be placed before the Superintendent of Police, Jalpaiguri.

(Harish Tandon, J)

(Rabindranath Samanta, J)