

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION**

PRESENT:

**THE HON'BLE JUSTICE SUBRATA TALUKDAR
&
THE HON'BLE JUSTICE TIRTHANKAR GHOSH**

(Via Video Conference)

CRM 490 of 2021

Mangaldip Barman

-vs.-

The State of West Bengal

Mr. Arnab Saha

...For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. A.P.P.

Mr. Ujjwal Luksom

Mr. Biswarup Roy

...For the State.

Heard on : 02.012.2021 & 09.12.2021

Judgment on : 09.03.2022

Tirthankar Ghosh, J:-

The present application for Anticipatory Bail has been preferred in connection with Alipurduar Women Police Station case no. 11 of 2021 dated 26.01.2021 wherein charge-sheet was submitted under Sections 448/376DA/506 of Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.

The petitioner's main contention was that the petitioner is a juvenile and he is entitled to anticipatory bail as he has been falsely implicated in connection with the instant case.

Initially a question was raised by the State regarding maintainability of the application for Anticipatory Bail as there was a bar under Section 438 Sub-section 4 of the Code of Criminal Procedure. The petitioner elaborated his argument by filing written notes of argument as also by relying upon number of authorities.

Learned advocate appearing for the petitioner relied upon: Shilpa Mittal –Vs. – State of NCT of Delhi & Ors., (2020)2 SCC 787; State of Madhya Pradesh –Vs. – Ram Krishna Balothia, (1995) 3 SCC 221; Vilas Pandurang Pawar –Vs. – State of Maharashtra, (2012) 8 SCC 795; Dr. Subhash Kashinath Mahajan – Vs.- State of Maharashtra & Anr., (2018)6 SCC 454; Debnarayan Sen @ Tilak Sen & Ors. –Vs. – The State of West Bengal, 2017 (1) CHN (CAL) 444; Pradipta Biswas –Vs. – State of West Bengal in CRM No. 10431 of 2018; Prithvi Raj Chauhan –Vs. – Union of India, (2020) 4 SCC 727;

In majority of the cases so relied upon by the petitioner the Hon'ble Supreme Court was dealing with the cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Said Act'), wherein the issue arose regarding the bar contained under Section 18 of the said Act for preferring anticipatory bail. The said issue of bar was held by the Hon'ble Supreme Court not to dis-entitle a Court from

considering the allegations in the FIR and the applicability of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It has been held that in case the allegations found in the materials on record do not justify the applicability of the provisions of the said Act, the bar will not dis-entitle a Court from considering an application for anticipatory bail.

In the case of Shilpa Mittal (supra) the Hon'ble Supreme Court was deciding the issue of dealing with the heinous offences under the Juvenile Justice (Care and Protection of Children) Act, 2015 and held that where an offence does not provide minimum sentence of 7 years the same cannot be treated to be heinous offence and as such the same is to be treated as serious offences within the meaning of the Act and the Hon'ble Supreme Court dealt with accordingly till the Parliament addresses on the issue.

We have heard the learned advocate appearing for the State and we find that the materials available in the Case Diary do reflect the gravity and heinousness of the offence. Further the conduct of the present petitioner in course of the investigation and the manner in which the offence has been committed do not inspire us to extend the benefit of Section 438 of the Code of Criminal Procedure.

The ratio of the aforesaid judgments in the facts of the case does not persuade this Court to extend *pari materia* reliefs to the petitioner considering the lack of identity of issues.

With the aforesaid observations we are of the opinion that the application for Anticipatory Bail being **CRM 490 of 2021** be **dismissed**.

Pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree,

(Subrata Talukdar, J.)

(Tirthankar Ghosh, J.)