

16.03.2023

12

Ct. No. 29

KAUSHIK

Allowed

C.R.M.(A) 1070 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Lalgola** Police Station Case No. **02** of **2023** dated **02.01.2023** under Sections 376/506 of the Indian Penal Code, 1860.

And

In Re : Tajmal Hoque @ Bhuttu

..... petitioner

Mr. Soumik Ganguly

Md. G. N. Imrohi

Ms. Susnigdho Bhattacharya

Md. Mainul Islam

Md. S. Biswas

....for the petitioner

Mr. Sandipan Das

Mr. Kiron Sk.

....for the de-facto complainant

Mr. Sudip Kumar

....for the State

Petitioner before us seeks anticipatory bail.

Petitioner claims himself to be a political personality and is the 'Karmadhyaksha' of a Panchayat Samity. Petitioner claims to be falsely implicated.

According to the petitioner, the de-facto complainant obtained loan from a Self-Help Group and was not repaying the same. On demands being made for repayment, the de-facto complainant filed the police complaint to falsely implicate the petitioner.

State and the de-facto complainant are represented.

Learned advocate appearing for the State refers to the statement of the de-facto complainant recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C.) and to the 161 Cr.P.C. statements of two witnesses.

The 161 Cr.P.C. statements suggest that there is a factional fight amongst the members of the Self-Help Group.

Learned advocate for the de-facto complainant refers to an order dated March 15, 2023 passed in WPA 6099 of 2023. He submits that, the learned Judge expected that the accused was arrested by the adjourned date.

In reply to a query of the Court as to whether the petitioner is a party in such writ petition or not, the answer is negative.

In reply to a query of the Court as to whether the writ petition contains an averment as to the pendency of the application for anticipatory bail, the answer is in the affirmative.

The de-facto complainant, while filing the writ petition was well-aware of the pendency of the application for anticipatory bail. The application for anticipatory bail was adjourned from time to time on the prayer of the de-facto complainant.

Despite the de-facto complainant as the writ petitioner adverted to the pendency of the application for anticipatory

bail, the petitioner before us was not made a party-respondent in the writ petition.

There is substance in the contention on behalf of the petitioner that, an order passed by the Writ Court in a writ petition in which, petitioner is not a party is not binding upon such petitioner.

Independent of the order passed by the Writ Court, there are materials in the case diary, which suggest that there are factional fight between two groups in a Self-Help Group. There are amounts, which are due and payable by the de-facto complainant to the Self-Help Group.

The issue of false implication of the petitioner cannot be overlooked at this stage.

In such circumstances, we grant anticipatory bail to the petitioner.

Accordingly, we direct that in the event of arrest the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on further condition that the petitioner shall meet the Investigating Officer as and when called for till the conclusion of the investigation and on condition that the petitioner shall appear on every date before the jurisdictional Court on and from the date fixed for

appearance of the accused and in default the jurisdictional Court will pass appropriate order to secure the presence of the petitioner in Court including cancelling the anticipatory bail granted without further reference to this Court.

This application for anticipatory bail is, thus, allowed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)