

04.05.2023

Sl.3
Court No.29
(AD)
(Rejected)

C.R.M. (A) 1769 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Kotwali** Police Station Case No.**849 of 2022** dated **24.11.2022** under Sections **420/468/509** of the Indian Penal Code, 1860 and Section **6** of the Protection of Children from Sexual Offences Act, 2012 and Sections **9/10/11** of the Prohibition of Child Marriage Act, Section **67B** of IT Act.

And

In the matter of: **Ajahar Mondal**

....petitioner.

Mr. Soumyajit Das Mahapatra

Mr. Supriyo Das

Ms. Madhurai Sinha

... for the petitioner.

Mr. Prasun Kumar Datta, Ld. APP

Mr. Nirupam Dhali

...for the State.

Petitioner prays for anticipatory bail.

The case diary demonstrates that there is a birth certificate of the victim where the date of birth ascribed is June 25, 2008.

The petitioner claims marriage.

Marriage certificate was investigated into and the police state that the marriage certificate exists.

The victim recorded a statement under Section 164 of the Code of Criminal Procedure where she states that she went voluntarily, married the petitioner and that, there was a husband and wife relationship between her and the petitioner.

It is the contention of the petitioner that, till such time, the validity of the marriage is not pronounced upon, the petitioner cannot be taken into custody for interrogation. Moreover, need for custodial interrogation does not arise in view of the statement of the victim recorded under Section 164 of the Code of Criminal

Procedure.

The victim is a minor and it stands established from the birth certificate of the victim. She is 14 years of age.

Physical relationship between her and the petitioner appears from the statement of the victim herself recorded under Section 164 of the Code of Criminal Procedure.

We cannot subscribe to the view as propounded by the petitioner that, till such time, the validity of the marriage is pronounced upon by a Court, a person can enter into a physical relationship with a minor under the garb of marriage.

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

Accordingly, the prayer for anticipatory bail of the petitioner is rejected.

C.R.M. (A) 1769 of 2023 is dismissed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)