

24.08.2023
SL. 9
Court No. 29
Suvayan
(Allowed)

C.R.M. (A) 2472 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Gaighata** Police Station Case No. **1069 of 2021** dated **17.11.2021** under Sections **323/420/120B/376/34** of the IPC.

And

In the matter of: **Arun Barik**

....petitioner.

Ms. Avipsa Chatterjee

...for the petitioner.

Mr. Debabrata Chatterjee

Mr. Santanu Chatterjee

...for the State.

Mr. Sujoy Sarkar

Mr. Asis Dutta

Mr. Rahul Chachan

...for the de facto complainant.

1. Heard learned Counsel for both the parties.
2. The long and short of the complaint made by the informant and her statement recorded under Section 164 Cr.P.C. is to the effect that the present petitioner is a amin; he used to visit the house of the prosecutrix; there developed acquaintance between them; the petitioner gave the victim proposal to marry; the victim denied to such proposal; on the pressure of her family member she ultimately agreed; on 23.03.2020 on the occasion of her birthday the victim invited the petitioner in her house; her parents were not there; taking advantage of loneliness of the victim the petitioner ravished her; thereafter when Lockdown intervened the petitioner took the plea that he goes without work and needs some time for marriage; again on 16.09.2021 the petitioner came to her house and ravished her against her wish. When the petitioner denied to marry her, the present FIR has been lodged.

3. It is our view that if a girl says 'No', that means 'No' but in a continuous relationship though aphysical, the distance between 'No' and willingness to surrender physically has a thin line of distinction and such distinction is to be best found out by the Trial Court during trial.
4. Further in a case of such type where the victim herself is aged about 39 years old it is to be found out whether the promise to marry was false or was for cheating from the very outset or it developed subsequently. It is now alleged that after receipt of notice by the victim from this Court, the petitioner threatened the victim to withdraw the case.
5. Regard being had to such facts and submissions, factum of permanent residence of the petitioner, nature of allegation and substantial progress in investigation, it is directed that the petitioner shall be released on bail by the Arresting Officer in the event of his arrest in the aforesaid P.S. case on such terms and conditions as deemed just and proper in the facts and circumstances of the case including the conditions that:
 - i) The petitioner is directed to appear before the I.O. on every alternate day till submission of F.F. and he shall give account of his previous day's activity before the I.O. on such appearance.
 - ii) The petitioner shall not contact the victim through any mode of communication and if it comes to knowledge of the I.O. that the petitioner has kept contact with the victim or has threatened her and the I.O. on enquiry verify the genuineness of the

same, the bail granted today shall be cancelled by the Court in seisin over the matter without further occurrence of the matter to this Bench.

6. The concerned Arresting Officer is hereby directed to act upon the server copy of this order.
7. Within 21 days from today the petitioner shall appear before the I.O. alongwith a server copy/certified copy of this order. If server copy is supplied, learned I.O. shall act upon that.
8. Accordingly, the prayer for the anticipatory bail is allowed.
9. The application being **CRM (A) 2472 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

