

08.08.2023
(M/L 132)
Ct. No.29
Dismissed
(SKB)

CRM (A) 2909 of 2023

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Moina P.S. Case No.57 of 2023 dated 06.03.2023 under Sections 363/365/366A/376(3) of the Indian Penal Code and Section 6 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act.

In the matter of : Goutam Maity

... Petitioner

Mr. Sumanta Chakraborty,
Ms. Kasturi Dutta

... for the petitioner

Mr. Ranabir Ray Chowdhury,
Mr. Mainak Gupta

... for the State

Mr. Satadru Lahiri,
Mr. Safdar Azam

... for the defacto complainant

1. Heard the learned Counsel for the parties.
2. In view of sub-Section 4 of Section 438 Cr.P.C., this application for anticipatory bail is not maintainable as the charge is under Section 376(3) IPC.
3. Learned counsel for the petitioner tried to impress upon us that the offence was in a consensual relationship with victim.
4. In view of seizure of birth certificate of the victim which speaks of the fact that the victim was below the age of 16 years on the date of occurrence, this court has no

jurisdiction to decide as of now whether the offence falls under Section 376(3) IPC or not.

5. Accordingly, the application for anticipatory bail is dismissed as not maintainable under sub-Section 4 of Section 438 Cr.P.C.
6. The petitioner is free to avail any appropriate remedy provided under the law.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)