

18.08.2023
SL. 18
Court No. 29
Sourav
(Allowed)

C.R.M. (A) 2925 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Santragachi** Police Station Case No. **19** of **2023** dated **09.03.2023** under Sections **376/354/506/34/120B** IPC.

And

In the matter of: **Surya Kanta Tiwari @ Guddu Tiwaari**
....petitioner.

Mr. Sourav Chatterjee
Mr. Soumya Basu Ray Chowdhuri
...for the petitioner.

Mr. Madhusudan Sur, Ld. APP
Mr. Arabinda Manna
...for the State.

Ms. Jeenia Rudra
Ms. Megha Chanda
... for the defacto complainant.

1. Heard learned Counsel for the parties.
2. The present petitioner is alleged to have outraged the modesty of the victim and also committed rape on her as per the FIR lodged on being forwarded under Section 156(3) Cr.P.C.
3. A lengthy statement of the victim has been recorded under Section 164 Cr.P.C. In such lengthy statement, there is mention about altercation between her husband and the petitioner over payment of money etc. In the entire statement, there is passing reference of commission of rape by the petitioner so far as the victim is concerned. On the other hand, it is found from the record of this petition that the present petitioner on 28.12.2022 had lodged an FIR against the husband of the informant/victim for cheating. On lodging of the said report, notice was issued to the husband of the victim and the victim under Section 41A Cr.P.C. After that

only, the present FIR has been lodged on being referred under Section 156(3) Cr.P.C. by the jurisdictional magistrate on 01.03.2023 and the offence is alleged to have been committed on the victim on 26.12.2022.

4. The six years old son of the victim has also been examined by the police in this case and his statement is not of any relevance so far as the commission of rape is concerned. The statement of the neighbouring witnesses is though supportive of the altercation, those are not indicative of any commission of rape.
5. From the materials on record though it cannot be concluded that the victim has lodged a false complaint but some doubt arises about the genuineness of the claim at least *prima facie* and the question of fact should be best left to the wisdom of the learned Trial Court.
6. Regard being had to the facts and submission, 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 in the event of his arrest by the Arresting Officer 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. once in a week on the day and time fixed by the I.O. for the purpose of investigation till submission of F.F.

- ii) the petitioner shall not threaten, induce or coerce any witness of this case in any manner whatsoever during the currency of this order.
- iii) the petitioner shall not leave the jurisdiction of the P.S. without obtaining prior leave from the I.O.

7. The petitioner is directed to appear before the I.O. within 21 days from today along with a server copy or certified copy of this order.
8. Accordingly, the prayer for the anticipatory bail is allowed.
9. The application being **CRM (A) 2925 of 2023** is disposed of.
10. The I.O. is hereby directed to act upon the server copy of this order, if required.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

