

04.09.2023

M/L. 6
Court No. 29
cm
(Allowed)

C.R.M. (A) 3356 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **New Alipore** P.S. Case No. **37 of 2022** dated **21.03.2022** under Sections **354/354D/376/324/506(II)** of the IPC.

And

In the matter of: **Pawan Kumar Jha @ Pavan Kumar Jha**

....petitioner.

Mr. Sourav Chatterjee

Mr. Soumya Nag

Mr. Aditya Tiwari

...for the petitioner.

Mr. Rudradipta Nandy, APP

Mrs. Sonali Das

...for the State.

Mr. Syed Shahid Imam

Md. Khairul

... for the de-facto complainant.

1. Heard learned Counsel for both the parties.
2. The First occurrence is alleged to have happened on 09.01.2021 and second occurrence is alleged to have happened on 03.08.2021. On 20.01.2022 a G.D. had been made by the informant alleging threat by the petitioner and on 21.03.2022 FIR has been lodged for offence under Section 354/354D/324/506(II) of the IPC. Subsequently, while the petitioner was on interim bail granted by the competent Magistrate, charge-sheet was filed adding Section 376 IPC. From the record of the petition, it is found that prayer has been made by the IO to add offence under Section 376D IPC, but the charge-sheet has been filed under Section 376 IPC along with the previous Sections mentioned supra.
3. The petitioner under threat of arrest did not surrender before the Court concerned, after expiry of the interim bail period and moved this application for anticipatory bail under Section 438 Cr. P.C.
4. The question we put to the learned Counsel for the petitioner is

whether the accused who has been granted bail can renew his prayer for anticipatory bail on higher offence being added in the charge-sheet. The learned Counsel for the petitioner relies on the case of *Bhadresh Bipinbhai Sheth vs. State of Gujarat & Anr.* 2016(1) SCC 152 and *Sumedh Singh Saini –vs. State of Punjab & Anr.* (2021) 15 SCC 588. He also relies on an unreported decision of this Court passed relying on the case of *Bhadresh Bipinbhai Sheth (Supra)*.

5. The fact of this case is similar to the facts in the aforesaid cases we, therefore, not going deeper into the matter except the law as settled by the Hon'ble Supreme Court hold that this petition is maintainable.
6. On the merit of the case, it is found that the 164 statement was recorded by the Magistrate on 06.04.2022 where allegation of rape is there but circumstances attending to and following the same appears to be suspicious at least *prima facie*. The learned Counsel for the petitioner submits that from the judicial records attached to this petition at pages 55 and 60, it is clear that there is tampering of the judicial records also so far as police papers submitted to the learned Magistrate is concerned.
7. There is no record of specific overt act against the petitioner during the period of the interim bail which lasted for about one year.
8. Regard being had to facts and submissions, factum of permanent residence of the petitioner, nature of allegation and completion of investigation, it is directed that the petitioner shall surrender before the learned Chief Judicial Magistrate, Alipore, South 24

Parganas within 15 days from today in the G.R. case arising out of aforesaid P.S. case. On his appearance and application for bail the petitioner shall be released on bail on such terms and conditions as deemed just and proper in the facts and circumstances of the case.

9. The learned CJM is directed to act upon the server copy of this order, if required.
10. Accordingly, the prayer for the anticipatory bail is allowed.
11. The application being **CRM (A) 3356 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

