

20.09.2023
(D/L 8)
Ct. No.29
Partly Allowed
(SKB)

CRM (A) 3429 of 2023

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Chanchal P.S. Case No.1059 of 2022 dated 06.09.2022 under Sections 498A/376D/323/308/34 of the Indian Penal Code and Section 3/ 4 of the Dowry Prohibition Act corresponding to G.R. No.2457 of 2022.

In the matter of : Benarul Hoque and others

... petitioners

Mr. Ashok Das,

Mr. Mazhar Hossain Chowdhury

... for the petitioners

Mr. Debabrato Chatterjee, ld. APP

Mr. Santanu Chatterjee,

Ms. Mousumi Sarkar

... for the State

1. Heard the learned Counsel for the parties.
2. From the narratives in the FIR and the statement of the witnesses recorded under Section 161 Cr.P.C. and the statement of the victim recorded under Section 164 Cr.P.C., it is found that at about 8 p.m. on 24.8.2022, the petitioner no.1, Benarul Hoque came to the house of the informant victim and begged for a glass of water; he drank the water and caught hold of the victim and ravished her. The victim raised alarm, on hearing such alarm, neighbouring people, others in the village and the husband of the victim gathered there. When the victim reported about the incident before her husband Anikul Houqe @ Anikul Hoque, petitioner no.3, he is alleged to

have scolded her, thrashed her, slapped her and driven her out from the house. Now the victim is residing elsewhere.

3. So far as petitioner no.2, Goni Md. @ Gani Mohammad is concerned, we do not find any specific allegation of overt act against him.
4. The reaction of the petitioner no.3, husband of the victim, however, may be an obvious emotional reaction. There is nothing against him so far as commission of rape or any part played by him to facilitate ravishment of his wife is concerned.
5. In view of the aforesaid facts, we are not inclined to exercise our discretion under Section 438 Cr.P.C. in favour of the petitioner no.1, Benarul Hoque.
6. Accordingly, the prayer for anticipatory bail in respect of petitioner no.1, Benarul Hoque is rejected.
7. So far as petitioner no.2 (Goni Md. @ Gani Mohammad) and petitioner no.3 (Anikul Houqe @ Anikul Hoque) are concerned, they are entitled to be enlarged on anticipatory bail, especially in view of nature of allegation against them.
8. Regard being had to such facts and submissions, factum of permanent residence of the petitioners, nature of allegation and substantial progress in investigation, it is directed that the petitioner nos.2 and 3 shall be released on bail by the Arresting Officer in the event of their arrest in the G.R. Case No.2457 of 2022 arising out of 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:

- i) The petitioner nos.2 and 3 are directed to appear before the IO once in a fortnight on the day and time fixed by the IO for the purpose of investigation till submission of Final Form.
 - ii) The petitioner nos.2 and 3 shall not threaten, induce or coerce any witness of this case in any manner whatsoever during the currency of this order.
9. Within 21 days from today petitioner nos.2 and 3 are directed to appear before the I.O. along with a server copy or certified copy of this order.
 10. Accordingly, the prayer for the anticipatory bail is partly allowed.
 11. The application being CRM(A) 3429 of 2023 is disposed of.
 12. The concerned Arresting Officer is hereby directed to act upon the server copy or certified copy of this order.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)