

31.08.2023
SL. 9
Court No. 29
Suvayan
(Allowed)

C.R.M. (A) 3495 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Kharagpur Local** Police Station Case No. **608 of 2023** dated **26.07.2023** under Sections **323/376(2)(n)/376B/506** of the IPC.

And

In the matter of: **Sandeep Kaushik**

....petitioner.

Mr. Kusal Kumar Mukherjee
Ms. Eshita Aich

...for the petitioner.

Ms. Z. N. Khan
Md. Kutubuddin

...for the State.

Mr. Pradeep Kumar
Mr. Subhamoy Patra

...for the opposite party No. 2.

1. Heard learned Counsel for both the parties.
2. The report submitted by learned Counsel for the State be taken on record.
3. This is a case instituted by the divorced wife against her husband. The mutual divorce was passed on 13.06.2023. The present occurrence is alleged to have happened on 05.07.2023 and 06.07.2023. The FIR has been lodged on 26.07.2023. A long statement has been given by the victim under Section 164 Cr.P.C. which basically dwells upon the incident prior to the divorce.
4. Learned Counsel for the informant submits that the divorce decree was obtained by fraud and such a question according to our considered view is not germane for our consideration. It is further submitted by learned Counsel for the informant that by the time the present occurrence happened on 05.07.2023 and 06.07.2023 the informant had no knowledge that divorce has already been granted and she came to know

about such fact from a neighbor.

5. If the informant had no knowledge of divorce and there has been co-habitation between husband and wife it cannot be stated to be against the Will of the victim wife as consent in such a case is presumed to be between husband and wife.
6. Be that as it may, if any fraud has been committed, the petitioner, if so advised, may move the competent Court for redressal of her grievance but for the alleged act as made out here we do not find any justification to curtail the valuable fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India.
7. Regard being had to such facts and submissions, factum of permanent residence of the petitioner, nature of allegation, nature of evidence 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. once in a fortnight 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.
8. The concerned Arresting Officer is hereby directed to act upon

the server copy of this order.

9. 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.
10. Accordingly, the prayer for the anticipatory bail is allowed.
11. The application being **CRM (A) 3495 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

