

31.08.2023  
D/L 21  
Ct. No.29  
(Allowed)  
(SKB)

**CRM (A) 3546 of 2023**

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Bhutni P. S. Case No.123 of 2023 dated 21.06.2023 under Sections 448/323/376/511/506/34 of the Indian Penal Code corresponding to G.R. Case No.3938 of 2023.

In the matter of : Santosh Ghosh and others  
... Petitioners

Md. Wasim Akram,  
Mr. Syed Murshid Alam  
... for the petitioners

Mr. Debabrata Chatterjee, ld. APP  
Mr. Santanu Chatterjee,  
Ms. Moushumi Sarkar  
... for the State

Mr. Subir Banerjee,  
Mr. Sandip Bandyopadhyay  
... for the defacto complainant

1. Heard learned Counsel for the parties.
2. In the FIR filed by the present petitioner no.1 against the husband of the present informant, it was alleged that the husband of the informant had committed offence under Sections 363/365 IPC read with Section 4 of the POCSO Act. In the said case, the husband of the present informant was arrested.
3. The present FIR has been lodged on being referred by the competent Magistrate under Section 156(3) Cr.P.C. From the statement of the victim recorded under Section 164 Cr.P.C., we find that the present occurrence happened on

16.04.2023. The complaint before the Magistrate was filed on 15.05.2023. Though there is explanation to the effect that the complainant was moving from pillar to post to get her information lodged, there was delay in filing of the complaint.

4. Be that as it may, it is a fact that the present FIR has been filed against the petitioners who are brothers on the allegation that all of them conjointly tried to ravish the victim. Such a case is *prima facie* not believable at least at this stage. The question be best left to be decided by the trial court during trial. When there is no record of past criminal antecedent against the petitioners (as submitted by learned counsel for the petitioners), we do not find any requirement of custodial interrogation of the petitioners, it is also not in good test to curtail the liberty of the petitioners.
5. 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 each of the petitioner shall be released on bail by the Arresting Officer in the event of their arrest in the G.R. Case No.3938 of 2023 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 petitioners are directed to appear before the IO once in a week on the day and time fixed by the IO for the purpose of investigation till submission of Final Form.
  - ii) The petitioners shall not threaten, induce or coerce any of the witness of this case in any manner whatsoever during the currency of this order.
6. Accordingly, the prayer for the anticipatory bail is allowed.
7. Within 21 days from today petitioners are directed to appear before the I.O. along with a server copy or certified copy of this order.
8. The applications being CRM(A) 3546 of 2023 is disposed of.
9. The 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.)**