

20.12.2023  
SL. 6  
Court No. 29  
Suvayan/  
Sourav

**C.R.M. (A) 4438 of 2023**

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **English Bazar** Police Station Case No. **987 of 2023** dated **24.06.2023** under Sections **6/17** of the POCSO Act and Sections **3(III) and 3(XI)** of the S.C. and S.T. (P.A.) Act.

And

In the matter of: **mamani Sarkar**

....petitioner.

Mr. Biswajit Tiwari  
Md. Bani Israil

...for the petitioner.

Mr. Saibal Bapuli, APP  
Mr. Soumik Ganguli

...for the State.

Ms. Mousumi Bhowal  
Mr. Aman Gupta  
Mr. Ishan Bhattacharya

...for the de facto complainant.

1. Heard learned Counsel for both the parties.
2. The petitioner is the wife of the principal accused and there is allegation against her to the effect that she abated the commission of offence and had abused the victim alleging her caste to be a lower caste.
3. It is submitted by learned Counsel for the state and learned Counsel for the informant that in view of bar under Section 18 of the S.C. and S.T. (P.A.) Act the present petition under Section 438 Cr.P.C. is not maintainable.
4. We have discussed in detailed the applicability of Section 18 of the aforesaid Act in our judgement dated 19.10.2023 passed in *Sudip Mondal and Others vs. State of West Bengal and Another (CRM(A) 2859 of 2023)*. Accordingly, the present application for anticipatory bail is disposed of in the light of the aforesaid judgment.
5. While not entertaining the present petition for anticipatory bail, we direct the petitioner to appear/surrender before the

Additional Sessions Judge, 2<sup>nd</sup> Court at Malda in connection with POCSO Case No. 95 of 2023 arising out of aforesaid P.S. case within seven days from the date of reopening of the Court after winter vacation. On her appearance/surrender and application for bail under Section 439 Cr.P.C., the petitioner being a lady and the allegation against her being at the fringe, shall be released on interim bail by the said Court.

6. The petitioner or her Counsel is directed to serve three sets of the copy of the bail application on learned Special Public Prosecutor in advance before seven days of her surrender. The Special Public Prosecutor shall take extra care to get the notice served on the victim/informant before the application for bail filed by the petitioner is disposed of.
7. It is made clear that the hearing of the bail application may be taken up on satisfaction about sufficiency of notice on the victim/informant irrespective of the fact whether she has opted to appear or not. It is further made clear that learned Special Court shall have the necessary discretion to release the petitioner on interim bail on such terms and conditions as deemed just and proper in the facts and circumstances of the case.
8. With the aforesaid observation, the application being **CRM (A) 4438 of 2023** is disposed of.

**(Chitta Ranjan Dash, J.)**

**(Partha Sarathi Sen, J.)**

