

14.12.2023

ML. 75

Court No. 29

Suvayan

(Allowed)

C.R.M. (A) 4728 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Shibpur** P.S. Case No. **54 of 2022** dated **25.02.2022** under Sections **323/509/34** IPC and Section **4** of the POCSO Act corresponding to Special T.R. Case No. **30 of 2022** pending before the learned Special Judge (POCSO Act) cum Additional Sessions Judge, Howrah.

And

In the matter of: **Ashis Kanrar & Ors.**

....petitioners.

Mr. Partha Pratim Das
Mr. Dev Kumar Sharma
Mr. Monajit Chakraborti

...for the petitioners.

Mr. Arijit Ganguly
Mr. Avik Ghatak

...for the State.

Mrs. Manasi Roy

...for the de facto complainant.

1. Heard learned Advocate for both the parties.
2. On perusal of the entire materials as placed before us including the written complaint, the statement of the victim as recorded under Section 164 Cr.P.C., the statements of the witnesses recorded under Section 161 Cr.P.C., the medical examination report of the victim boy, we found that though the allegation as made out in the written complaint is really serious in nature which gets support from the statement of the victim as recorded under Section 164 Cr.P.C. but from the medical examination report of the victim boy, we find no whisper about the alleged action on the part of the petitioners to attract the provision of Section 4 POCSO Act at least *prima facie*.
3. The versions of the neighbours as recorded under Section 161 Cr.P.C. justifies submission of the learned Advocate for the

petitioners that there lies a property dispute between the parties.

4. Learned Advocate for the informant in course of her submission convey to us that out of misunderstanding the said complaint has been lodged and the matter has now been settled.
5. Regard being had to facts and submissions, factum of permanent residence of the petitioners, nature of allegation, nature of evidence and completion of investigation, it is directed that each of the petitioner shall surrender before the learned Special Judge (POCSO Act) cum Additional Sessions Judge, Howrah within 15 days from today in the Special T.R. case No. 30 of 2022 arising out of aforesaid P.S. case.
6. On their appearance and application for bail each of 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.
7. The learned Special Judge (POCSO Act) cum Additional Sessions Judge, Howrah is directed to act upon the server copy of this order, if required.
8. Accordingly, the prayer for the anticipatory bail is allowed.
9. The application being **CRM (A) 4728 of 2023** is disposed of.
10. Before parting with the order, we feel persuaded to observe here that in many cases we are finding that there is heavy misuse of the stringent provision of POCSO Act to take revenge. In view

of such fact the investigating agency should be careful to probe every aspect of the allegation and counter allegation before reaching a conclusion whenever doubt arises regarding misuse of the Act.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

