

13.6.2023

Sl. No.3

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[ALLOWED]

IN THE HIGH COURT AT CALCUTTA

Circuit Bench at Jalpaiguri

CRM (A) 227 of 2023

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Sitai Police Station Case No. 33 of 2023 dated 03.03.2023 under Sections 12/17 of the Protection of Children from Sexual Offences Act, 2012.

And

In Re: ***Kabita Barman & Anr.***

... .. Petitioners

Mr. Surajit Basu

Mr. Ratan Chandra Roy ... for the petitioners

Mr. Abhijit Sarkar

Mr. Sagnik Sankar Sikdar ... for the State

Mr. Arnab Saha ... for the de-fact complainant

Heard the learned advocates appearing for the parties.

The petitioner no. 1 is the mother of the petitioner no. 2. The petitioner no. 2 is a minor.

Learned counsel for the petitioners submits that the application for anticipatory bail is maintainable in case of a minor in view of the decision of a coordinate bench passed in ***CRM 405 of 2021 with CRAN 1 of 2021 (Miss Surabhi Jain (minor) & Ors. v. The State of West Bengal)*** on 23rd August, 2021. However, in all fairness he has also submitted that this decision was not followed by a subsequent coordinate bench passed in CRM 2739 of 2021 (***Suhana Khatun & Ors. Vs. State of West Bengal***) on 20th January, 2022.

Learned counsel for the petitioners further submits that the petitioners are innocent and since the petitioner no. 1 did not accede to the request of the de-facto complainant, for his son getting married to the victim, a false complaint was lodged after three months of the occurrence of the alleged incident.

Learned counsel appearing for the de-facto complainant in opposing the prayer for anticipatory bail has submitted that the victim has directly implicated the petitioner no. 2. However, in all fairness Mr. Saha has submitted that an application for anticipatory bail on behalf of the minor is maintainable in view of the decision in the case of ***Miss Surabhi Jain (minor) & Ors. (supra)*** and this decision has been followed by different High Courts, namely, i) Chhattisgarh High Court in the case of ***Mohan Vs. State of Chattisgarh, reported in 2006(2)Crimes 141***, ii) Chhattisgarh High Court in the case of ***Subhash Kumar @ Sonu and Ors. Vs. State of Chhattisgarh and Ors.*** in M.Cr.C.No.5651 of 2014, M.Cr.C.No.6071 of 2014, M.Cr.C.No.6072 of 2014 passed on 28th November, 2014 iii) Kerala High Court in the case of ***Gopakumar Vs. State of Kerala, reported in 2013(122) AIC 505***, iv) Odisha High Court in the case of ***Subham Jena & Another Vs. Sate of Odisha in CRLREV No. 551 of 2022*** passed on 5th January, 2023 and v) Allahabad High Court in ***ABAIL No. 8361 of 2020 & 31 Others*** passed on 24th May, 2023.

Learned counsel appearing for the State in opposing the prayer for anticipatory bail has referred to the statement of the victim recorded under Section 164 Cr.P.C. However, the learned counsel has

agreed with the submission made by Mr. Saha, learned counsel for the de-facto complainant as well as the submission of the learned counsel for the petitioners that an application for anticipatory bail is maintainable in case of a minor.

We have carefully read the judgments of our coordinate benches on this point as also the other High Courts and we are also of the view having regard to the fact that Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, in short J.J Act, it is clearly specified that if a child is apprehended with or detained he/she should be released on bail, an application for anticipatory bail is maintainable. The word “apprehension” postulates a threat of being arrested and the said provision read with other provisions of the Act are not specifically denying the right to apply for anticipatory bail read with the fundamental right that the child enjoys under Article 21 of the Constitution of India pre-supposes that a child shall have the right to apply for anticipatory bail at the pre-arrest stage and accordingly, the view expressed by a coordinate bench presided over by Harish Tandon, J in ***Miss Surabhi Jain (minor) & Ors. (supra)*** is accepted. Moreover, in absence of any provision like Section 18A (2) of the Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 we are of the view that the application for anticipatory bail is maintainable. We are also of the view that there is no apparent conflict of the Code of Criminal Procedure and the Juvenile Justice Act in relation to a minor being entitled to apply for anticipatory bail, such application is maintainable.

Having considered the materials available in the case diary and the nature of involvement of the petitioner no. 1 in the commission of alleged offence and the petitioner no. 2 is a minor involved in the alleged offence and the fact that the other co-accused, who are similarly placed as that of the petitioner no. 1, have been enlarged on bail, we are of the view that the custodial interrogation of the accused/petitioner no. 1 may not be necessary and she may be granted anticipatory bail.

Accordingly, we direct that in the event of arrest, the accused/petitioner no. 1, **Kabita Barman** be released on bail upon furnishing a bond of Rs.5,000/- (Rupees Ten thousand only), with two sureties of like amount each, to the satisfaction of the arresting officer and also subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on further condition that she shall co-operate with the investigation and she shall surrender before the court below within four weeks from date and pray for regular bail.

So far as the petitioner no. 2 is concerned, we direct that in the event of arrest, the accused/petitioner no. 2, **Hriday Chandra Barman** be released on bail in connection with Sitai Police Station Case no. 33 of 2023 by the apprehending officer on furnishing of Personal bond by the father/guardian and on an undertaking that he shall appear before the Juvenile Justice Board as and when required.

The application for anticipatory bail is, thus, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this court.

(Raja Basu Chowdhury, J.)

(Soumen Sen J.)