

5.09.2023
Item no.14
Court No.01
P.P./S.D.

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
APPELLATE JURISDICTION**

CRM (A) 676 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure;

And

In the matter of: Bapi Dey @ Ujjal Dey & Anr.
.... Petitioners

Mr. Bikramaditya Ghosh

Ms. Supriya Singh

Mr. Anirban Banerjee

....for the petitioners

Mr. Nilay Chakraborty

Mr. Arjun Chowdhury

..... for the State

Apprehending arrest in connection with Mal Police Station Case No.263 of 2023 dated 17.4.2023 under Section 370(4)/120(B)/R/W Section 75/81 of the Juvenile Justice Act, the present application has been preferred.

Mr. Ghosh, learned advocate appearing on behalf of the petitioners submits that the petitioner no. 1 married the petitioner no. 2 in the year 2004. They were blessed with a child, who unfortunately expired immediately after birth. Subsequently, the petitioner no. 2 could not conceive a baby. Under such compelling circumstances, they were desirous of adopting a child and accordingly applied for registration before the Central Adoption Resources Authority (CARA). Such application was, however, cancelled due to certain discrepancies

in the month of April 2023. Thereafter, they adopted a female baby, whose parents were residents of the locality. On 15.4.2023, a complaint was lodged by an official of Lataguri Health Welfare Centre before the Block Medical Officer of Health, who in turn forwarded such complaint to the Inspector-in-Charge, Malbazar Police Station and the same was registered as Mal Police Station Case No. 263 of 2023 dated 17.4.2023.

Mr. Ghosh argues that the ingredients of Section 370(4) of the IPC and Sections 75 and 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015 are not attracted against the petitioners. In the said conspectus, custodial interrogation of the unfortunate couple may not be necessary.

Mr. Chowdhury, learned advocate appearing on behalf of the State has drawn our attention to the statements of the witnesses and other materials in the case diary.

Heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

Prima facie, the ingredients of Section 370(4) of the IPC are not attracted against the petitioners. We have been informed that the child had already been recovered on 17.4.2023 and is presently in a Child Welfare Home. The age of the child on the date of such recovery was about 1 month 4 days. Bearing in mind the nature of accusations, in the light of the arguments as advanced and taking into consideration the statements of the witnesses, we are of the opinion that the

custodial detention of the petitioners may not be necessary more so, when there is no possibility that the petitioners would flee from justice. In view thereof, the petitioners' prayer for anticipatory bail is allowed.

We direct that in the event of arrest, the petitioners namely, **Bapi Dey @ Ujjal Dey and Saheli Dey**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand Only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the arresting officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 with a further condition that the petitioner no. 1 shall meet with the Investigating Officer of the case once a fortnight till investigation is completed.

The application for anticipatory bail CRM (A) 676 of 2023 is disposed of.

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

(Lapita Banerji, J.)

(Tapabrata Chakraborty, J.)