

25.09.2023.

Item No. 31

ap

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE*

C.R.M. (A) No. 702 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 filed on 21.08.2023 in connection with Tufanganj Police Station Case No. 521 of 2022 dated 26.06.2022 under Sections 341/323/325/313/354/34 of the Indian Penal Code.

And

In the matter of: **Nabab Hoque.** ...petitioner

Mr. Biswajit Mitra,
Mr. Bitasok Banerjee,
Mr. Swarup Das,
Mr. Satyajit Paul. ...For the petitioner

Mr. Kallol Acharjee,
Mr. Tapan Bhattacharjee.For the State

1. This is a second application for anticipatory bail. In an earlier application being C.R.M. (A) No. 454 of 2022 by an order dated 3rd November, 2022, a Co-ordinate Bench of this Court has granted bail to the accused nos.2 to 10 and anticipatory bail has been denied to the petitioner.

2. The learned Public Prosecutor has, however, raises a strong objection to the petitioner being granted anticipatory bail. He also submits that the warrant of arrest has been issued against the petitioner and a second application for anticipatory bail is not maintainable.

3. This Court has very carefully considered the statements of the victim recorded under Sections 161 and

164 of the Code of Criminal Procedure. The complaint as well as other statements recorded under Section 161 of the Code of Criminal procedure do not indicate that the petitioner had singled out the victim to kick her in the abdomen.

4. The incident arose out of a land dispute between the petitioner's family and the victim's family, who are adjoining land owners. In a heated moment, the petitioner's family members attacked the father-in-law of the victim. In order to save her the father-in-law, the victim rushed towards him.

5. The victim has stated in several places that she was assaulted by all the other accused persons.

6. In those circumstances, this Court is of the view the petitioner was not solely responsible for the incident which led to the unfortunate assault on the victim and leading to her miscarriage. She was four months pregnant at the relevant point of time.

7. In the above circumstances, this Court is of the unequivocal view that since other accused nos.2 to 10 have been granted anticipatory bail and since the petitioner stands on the same footing as that of the accused nos.2 to 10, the petitioner should also be granted to anticipatory bail.

8. It is directed that in the event of arrest, the petitioner shall be released on bail to the satisfaction of the

arresting officer upon furnishing a Bond of Rs.10,000/- with two sureties of Rs.5,000/- each, one of whom must be local.

9. This order is subject to the conditions laid down in sub-section (2) of Section 438 of the Code of Criminal Procedure.

10. The Case Diary be returned.

11. C.R.M. (A) No. 702 of 2023 is, thus, disposed of.

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

(Supratim Bhattacharya, J.) (Rajasekhar Mantha, J.)