

27.08.2024  
Court No.29  
Item No. 198

sg

**CRM (DB) 954 of 2024**

In Re:- An application for anticipatory bail under Section 439(2) of the Code of Criminal Procedure.

And

In Re: **xxx & Anr.**

Petitioners

Mr. Pratik Bhattacharyya

For the Petitioners

Md. Sabir Ahmed

Mr. Maidul Islam Kayal

Mr. Dhiman Banerjee

For the opposite party nos. 2 and 3

Md. Anwar Hossain

Mr. Pinaki Sarkar

For the State

1. This is an application for cancellation of anticipatory bail granted by the learned Sessions Judge.
2. Mr. Pratik Bhattacharyya, learned Counsel appearing for the petitioners submits that she has undergone mental torture for which she could not file the FIR immediately after the occurrence of such incident and in consideration of the application of the anticipatory bail, the Trial Court has made certain observations which are likely to affect the trial. It is submitted that the learned Magistrate did not allow the victim to place all the facts and made her signature with incomplete narration of facts. It is further informed that the learned Trial Court has relied upon the few documents to show that the victim is a mental patient and such observation is likely to affect the trial as the said observation appears to be final in nature.
3. The learned Counsel for the State has produced the case diary.

4. The learned Counsel for the opposite parties has submitted that they have already surrendered in terms of the order and they are presently on bail.
5. Even if we accept for the time being that due to certain mental trauma, the petitioner was unable to lodge complaint, the other factors that weighed with the learned Trial Judge cannot be ignored. The learned Trial Judge has taken into consideration the statement under Section 164 of the Code of Criminal Procedure, the medico legal examination report and the prescriptions of two doctors with regard to mental condition of the victim in deciding the application for anticipatory bail in favour of the opposite parties.
6. In the petition it has been alleged by the petitioners that the petitioner no.2 was treated by Dr. Akhilesh Pal at the instance of the opposite parties and the said doctor on a particular day applied medicine to make her drowsy and obtained her signature on blank paper.
7. However, in the petition we could not find any complaint being lodged against the said doctor whereas the learned Trial Court while granting anticipatory bail has relied not only upon the prescription of Dr. Pal but upon another prescription of Institute of Psychiatry-A Centre of Excellence also in order to form a prima facie opinion and the opposite parties were entitled to anticipatory bail.
8. The apprehension expressed that such observation is likely to affect the trial, is not appreciated or accepted as the law is very clear that the opinions expressed while granting or rejecting an application for anticipatory bail are only prima facie and cannot influence the trial.
9. The learned Counsel for the State, however, submits that final report has not been submitted.

10. In the event final report has not been submitted, the I.O. shall immediately take steps for submitting the report in the final form and in the event any charge sheet is filed, we would request the jurisdictional court to expedite the matter. We make it clear that our observation shall not influence the I.O. in submitting the final report nor the trial, if commenced.
11. Since we feel that the affidavit in reply is not required and the matter may be disposed of on the basis the case diary we have not extend the time to file the affidavit in reply.
12. Copy of the supplementary affidavit served upon the opposite parties in terms of our order is taken on record, wherefrom it appears that subsequent to the order granting bail, the mother of the victim lodged two several diaries on being GDE/800 dated 20-02-2024 and GDE/1316 dated 29-02-2024 with the Diamond Harbour Police Station alleging that the petitioners have been abused and wrongfully confined by the opposite parties.
13. While disposing of the application, we make it clear that in the event the bail conditions are violated, the petitioners shall be at liberty to apply before the learned Trial Court for cancellation.
14. The supplementary affidavit shall be treated as an original until Mr. Bhattacharyya filed the original supplementary affidavit.
15. Leave is given to Mr. Bhattacharyya to file the original supplementary affidavit in course of this week.
16. CRM (DB) 954 of 2024 is accordingly, disposed of.
17. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

**(Soumen Sen, J.)**

**(Uday Kumar, J.)**