

15.04.2024

44

S.D./A.D.

Allowed

C.R.M. (A) No. 1199 of 2024

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Kharagpur (Local) Police Station Case No. 855 of 2022 dated 16.10.2022 under Sections 342/448/323/354/379/506/34 of the Indian Penal Code, 1860 and read with Section 8 of the POCSO Act, 2012 pending before the Special Court under POCSO Act, learned Additional & District Sessions Judge, 2nd Court, Paschim Medinipur.

And

In Re : Amit Banerjee alias Amit Kumar Banerjee petitioner

Mr. Ayan Bhattacharya

Mr. Daanish Haque

Md. Zohaib Rauf

Mr. Abdul Zahid

.....for the petitioner

Mr. Arani Bhattacharyya

....for the State

Mr. Sourabh Mitter

Mr. Sumitava Chakraborty

Ms. Bratati Pramanick

...for the de facto complainant

1. Co-accused Santosh Kumar Sahoo is the owner of a hotel. De facto complainant and her husband was assigned a work contract for interior decoration of the hotel. Dispute cropped up and criminal cases were registered against the husband of the de facto complainant. In retaliation, an application was filed by de facto complainant before Magistrate alleging sexual assault on her daughter. Learned Magistrate dismissed the application. Suppressing this fact, present case was registered. Accordingly, he prays for anticipatory bail.
2. Learned Lawyer for the State produces the case diary.

3. Learned Lawyer for the de facto complainant submits victim had been sexually assaulted in the hotel by the petitioner and co-accused Santosh Kumar Sahu @ Sahoo.
4. We have considered the materials on record. We have also examined the statement of the victim. Incident occurred in 2021 (wrongly stated as 2020). However, FIR came to be registered in October 2022 i.e. after a lapse of eight months. In the interregnum, criminal cases had been registered against the de facto complainant's husband alleging misappropriation of funds. Ordinarily delay in lodging FIR is a little consequence in a case of sexual assault against minor. However, in the present case criminal case had been registered against the father of the victim at the behest of the petitioner alleging misappropriation of funds. Moreover, an earlier application under Section 156(3) Cr.P.C. by the father of the victim had been turned down by the Magistrate after considering the enquiry report submitted by police. In this backdrop, possibility of false implication due to prior enmity cannot be ruled out.
5. Under such circumstances, we are inclined to grant anticipatory bail to the petitioner.
6. Accordingly, we direct that in the event of arrest the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, to the satisfaction of the arresting officer and also

be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on condition he shall appear before the jurisdictional Court and pray for regular bail within a period of four weeks from date and on further condition petitioner shall meet the Investigating Office once a week until further orders.

7. The application for anticipatory bail is, thus, allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)