

26.09.2024
Court No.29
Item No. 9

sg

CRM (A) 3273 of 2024

In Re:- An application for anticipatory bail under Section 482 of the BNSS Act, in connection with Raiganj Police Station Case No. 776 of 2024 dated 02.08.2024 under Sections 85/329(4)/115(2)/109/3(5) of BNS.

And

In Re: **Mozammel Hoque @ Mojamel Hoque**
Petitioner

Mr. Milon Mukherjee, Sr. Adv.
Mr. Smartajit Sarkar

For the Petitioner

Mr. Arijit Ganguly
Mr. Tapas Kumar Saha

For the State

Ms. Nandita Baksi
Mr. Sohom Banerjee (HCLSC)

For the defacto complainant

1. It appears that over custody of a child, a dispute arose between the husband and the wife and a compliant has been lodged by the wife, the defacto complainant, against the husband.
2. We have heard Mr. Milon Mukherjee, learned Senior Counsel appearing for the petitioner and Ms. Nandita Baksi and Mr. Sohom Banerjee, learned Advocates for the defacto complainant.
3. The learned Counsel for the State has opposed the prayer for anticipatory bail and produced the case diary.
4. However, an incident that had occurred on 16th June, 2021, two FIRs were lodged and thereafter the present FIR has been lodged. Considering the

materials available in the case diary, the nature of the dispute and the medical report dated 1st August, 2024 wherefrom it appears that the de facto complainant alleged to have been driven out on 6th June, 2021 and the FIRs have been lodged much earlier and there are apparent contradictions and apparent inconsistencies, we are, prima facie, of the view that the custodial interrogation of the petitioner is not necessary. However, we feel that the de facto complainant, being the mother of the child, is entitled to have interaction with the child and should be allowed visitation right at least once in a week. This shall be subject to any decision that may be taken by any competent Court regarding custody of the child.

5. Mr. Mukherjee has also fairly submitted that such condition may be mentioned in the order acknowledging that the mother is also equally entitled to have access of the child.
6. Accordingly, we direct that in the event of arrest the petitioner namely, **Mozammel Hoque @ Mojamel Hoque**, shall be released on bail upon furnishing a bond of Rs.10,000/- with two registered sureties of like amount each, to the satisfaction of Arresting Officer, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure corresponding to Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita. The petitioner shall meet the I.O. once in a fortnight till the submission of the final report. The petitioner shall appear before the jurisdictional Court within two weeks from date.
7. Accordingly, the prayer for anticipatory bail of the petitioners is allowed.

8. At the suggestion of the parties and also having regard to the fact that it involves the custody of the child, we feel that the matter may be referred to mediation for an amicable solution.
9. We, accordingly, direct the Secretary, Mediation Centre to appoint a Mediator from the panel.
10. The learned Counsel for the parties have agreed that they shall cooperate with the mediation proceeding to bring about an amicable settlement.
11. The application for anticipatory bail is disposed of.

(Soumen Sen, J.)

(Uday Kumar J.)