

02.01.2024
03
Ct. No. 29
S.D.
Allowed

C.R.M.(A) 4199 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Pukhuria** Police Station Case No. **298** of **2023** dated **17.7.2023** under Section 10 of the Protection of Children from Sexual Offences Act.

And

In Re : Sk. Gafur @ Babu

..... petitioner

Mr. Debapriaya Majumder

Mr. Akash Sarkar

....for the petitioner

Mr. Partha Pratim Das

Ms. Eshita Dutta

....for the State

The application for anticipatory bail is taken up for consideration subsequent to the order dated October 16, 2023 by the Coordinate Bench.

It is submitted at the bar that, such order was passed just prior to the Puja Vacation and without consulting the materials in the case diary.

We perused the case diary.

A victim claiming herself to be 13 years of age, was apparently subjected to bad touch. She recorded a statement recorded under Section 164 of the Cr.P.C. where she claimed that her clothes were torn in the process. There is also an eyewitness to the incident recorded under Section 161 of the Cr.P.C.

There is a variation of the incident narrated by the victim in her statement recorded under Section 164 of the Cr.P.C. and

the statement of the eyewitness. Moreover, the claim of the victim that her clothes were torn is not corroborated by the materials in the case diary, in the sense, that such torn clothes were not seized by the police.

The eyewitness claimed that there is a pre-existing dispute between the victim and the petitioner before us.

In such circumstances, we grant anticipatory bail to the petitioner.

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 further condition that the petitioner will remain outside the jurisdiction of the police station where the police case was registered. He will submit his new address both to the Jurisdictional Court as also to the Investigating Officer. He is at liberty to enter the jurisdiction of the local police station for the purpose of investigation and for the purpose of attending Court only. He shall meet the Investigating Officer once in a fortnight till the conclusion of the investigation and on condition that the petitioner shall appear on every date before the Jurisdictional Court on and from the date fixed for appearance of the accused and in default the jurisdictional Court will pass appropriate order to secure the

presence of the petitioner in Court including cancelling the anticipatory bail granted without further reference to this Court.

There is a difference in the part of the body where the petitioner allegedly touched the victim as appearing from the Statement of the victim recorded in the statement under Section 164 of the Cr.P.C. and police complaint.

This application for anticipatory bail is, thus, allowed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)