

14.11.2024
Sl. No.13
akd
[ALLOWED]

C. R. M. (A) 3762 of 2024

In Re: An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed on 08.10.2024 in connection with Contai Woman Police Station Case No.0091 of 2024 dated 10.09.2024 under Sections 123/3(5)/329(4)/351(3)/70(1)/74 of the Bharatiya Nyaya Sanhita, 2023. (G.R. Case No.2507 of 2024)

And

In Re: **Chandan Pulai & Ors.**

... .. Petitioners

Mr. Rajdeep Majumder
Mr. Pritam Roy
Ms. Arushi Rathore
Mr. Soewel Bhattacharjee
Ms. Triparna Roy

... .. for the petitioners

Mr. Ashok Das
Ms. Ayana Dey
Ms. Hasi Jana

... .. for the de-facto complainant

Mr. Debasis Roy .. Id. Public Prosecutor
Mr. Parvej Anam

... .. for the State

1. Learned Advocate for the petitioners submits petitioner no.3 does not press for anticipatory bail as he has been implicated in bailable offences in the charge sheet.
2. Accordingly, prayer for anticipatory bail of petitioner no.3 namely, **(3) Sk. Abbas** stands dismissed as not pressed.
3. It is submitted on behalf of the petitioners that petitioner nos.1 & 2 are students of Ramnagar College, Contai. Victim and her husband are also students of the said college. It is further submitted allegation of gang rape is inherently improbable. There is inordinate delay of about two months in lodging FIR. Petitioners have been falsely implicated. Accordingly, they pray for anticipatory bail.

4. Learned Public Prosecutor opposes the prayer for anticipatory bail. He relies on the statement of the victim recorded before Magistrate and other materials.

5. Learned Advocate for the de-facto complainant also opposes the prayer for anticipatory bail and submits petitioners are the union leaders of the college. Taking advantage of their position, they entered into the room of the victim and her husband. They compelled her to drink liquor. When she became senseless, she was raped. She was recovered without clothes from the passage with injuries. Out of fear of reprisal, no FIR could be registered.

6. We have considered the materials on record. Gang rape is a very serious offence. Statement of the victim before Magistrate discloses co-accused viz. Rahul had tried to outrage her modesty on the earlier day. On the next day petitioners and one Rajkumar came to their residence and compelled the victim and her husband to drink liquor. Both of them became senseless. Thereafter her husband recovered her from the balcony without clothes. She had injuries. Subsequently they were threatened by the petitioners.

7. We have tested the intrinsic value of the aforesaid statement in light of attending circumstances. As per the victim's statement, petitioners had entered her room and consumed liquor with herself and her husband. Thereafter, the victim and her husband became senseless. In these circumstances, it was not possible for her to recount whether she had been raped. Moreover, prosecution relies on incriminating circumstances that is she was recovered without clothes in an injured condition to establish a case of gang rape.

8. Nothing is placed on record to show victim was medically treated for the injuries. This improbabilises the prosecution case with regard to

the injuries on her person. Though delay in lodging the FIR may be explained due to threat and coercion, it belies logic that a victim who suffered multiple injuries had not been medically treated.

9. With regard to the circumstances that she was recovered without clothes, victim and her husband's version is not corroborated by the other inmates of the hostel.

10. Under such circumstances, we are of the considered view there is no direct evidence with regard to involvement of the petitioners in the offence of gang rape. Circumstantial evidence relied by the prosecution suffers from various infirmities and requires to be assessed at the appropriate stage of the proceeding. Investigation is complete. Co-accused have been enlarged on regular bail.

11. Hence, we are of the opinion though custodial interrogation of the petitioners is not necessary, they require to be subjected to strict conditions in order to restrict their movement and access to the victim and other witnesses to instil confidence and ensure smooth progress of trial.

12. Accordingly, we direct in the event of arrest, the petitioners, namely **(1) Chandan Pulai & (2) Satadal Bera**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties of like amount each, to the satisfaction of the arresting officer and also subject to the conditions as laid down under Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and on further condition that the petitioners, while on bail, shall not enter the district of Purba Medinipur except for the purpose of attending court proceedings and shall provide the address where they shall presently reside to the Investigating Agency as well as the court below and shall report to the Officer-in-charge of the police station concerned within

whose jurisdiction they shall presently reside once in a week until further orders. They shall not directly, electronically or otherwise contact the victim or other witnesses in any manner whatsoever. They shall appear before the jurisdictional court and pray for regular bail within four weeks from date.

13. The application for anticipatory bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)