

20.12.2024

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Allowed

C.R.M. (A) No. 4067 of 2024

In Re:- An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita in connection with Kaliachak Police Station Case No. 400 of 2024 dated 03.04.2024 under Section 109 of the Indian Penal Code read with Section 6 of the POCSO Act.

And

In Re : Mohibur Rahaman @ Mahibur Rahaman @ Dilip
..... petitioner

Mr. Wasim Akram

.....for the petitioner

Mr. Shiladitya Banerjee

Mr. Bikram Mitra

.....for the State

Mr. Mrityunjoy Chatterjee

..... for the opposite party no. 2

1. Learned Counsel for the petitioner submits he has been falsely implicated in the present case. Earlier criminal case was registered against one Abu Hasan @ Saheb (a live in partner/husband of the victim) alleging he had raped the niece of co-accused Eklemur Hoque.

2. In response to this submission learned Counsel for the *de facto* complainant vehemently contended Abu Hasan was no way related to the victim.

3. Investigating officer was directed to submit report. An incomplete report was placed on record and a more elaborate report was sought.

4. Detailed report is placed today. In the report purported statements of the witnesses are enclosed who claim that victim is not married are enclosed.

5. On the other hand, petitioner has submitted a supplementary affidavit enclosing documents relating to the e-ration cards of the victim as well as Abu Hasan.

6. Status of the e-ration cards as on 14.12.2024 show both these persons had the same family I.D. i.e. 1904306624. This gives an impression that both of them are belonging to the same family.

7. Learned Counsel for the victim submits petitioner had intimidated villagers to record statements that she is married to Abu Hasan.

8. We have considered the materials on record. We note statements recorded by the police and those annexed to the petitioner's supplementary affidavit are at variance to one another. We choose to ignore both sets of statements. However, contemporaneous document i.e. e-ration cards gives an impression that the victim and one Abu Hasan belong to the same family. It is not material whether the victim is married to the said person or not. Admittedly a criminal case alleging rape has been registered against Abu Hasan by the niece of co-

accused Eklemur Hoque. This would give propensity to falsely implicate the petitioner in the crime. Credibility of the allegation requires to be tested on this anvil at the appropriate stage of the proceeding. In this backdrop we are of the opinion custodial interrogation of the petitioner is not necessary and he may be granted anticipatory bail. However, movement of the petitioner requires to be restricted in order to instill confidence in the mind of the victim.

9. 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 482(2) of the Bharatiya Nagarik Suraksha Sanhita and on condition that he shall appear before the jurisdictional court and pray for regular bail within a period of four weeks from date and on further conditions that while on bail petitioner shall stay outside the jurisdiction of Kaliachak Police Station until further orders except for the purpose of reporting to the Officer-in-Charge, Kaliachak Police Station once in a week until further orders and shall provide the address where he shall presently reside to the said officer and the jurisdictional court.

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

11. We record our displeasure with regard to the laconic and indifferent manner in which the investigation is conducted in the case.

12. Copy of this order be communicated to the Superintendent of Police, Malda.

13. Presence of the investigating officer is noted and dispensed with.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)