

07.02.2024

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Ct. No. 29

S.D.

REJECTED

**C.R.M.(A) 5598 of 2023**

In Re:- In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Malda** Police Station Case No. **532 of 2023** dated **06.09.2023** under Section **376AB/506** of the Indian Penal Code read with Section 6 of the POCSO Act, 2012.

And

In Re : Naren Ghosh

..... petitioner

Mr. Rajeddp Majumder

Mr. Pritam Roy

Ms. Shyanti Poddar

...for the petitioner

Mr. Ranadeb Sengupta

...for the State

Affidavit of service filed in Court be taken on record.

Despite service, none appears on behalf of the defacto-complainant.

Police filed charge sheet *inter alia* under Sections 376AB/506 of the IPC read with Section 6 of the POCSO Act, as against the petitioner.

Learned advocate appearing for the petitioner submits that, the police complaint is one of false implication and that, the materials in the case diary would not corroborate the charges. He draws the attention of the Court to the fact that there are subsisting land disputes between the private parties and that, one day before the present police complaint, his client lodged a police complaint against the family members of the victim.

An application for anticipatory bail is barred under Section 438 (4) of the Cr.P.C.

Notwithstanding such bar, we considered the materials in the case diary in order to satisfy our conscience as to whether the case diary contains materials to suggest the charges levelled against the petitioner or not.

We find from the case diary that the victim who is a minor, recorded a statement under Section 164 of the Cr.P.C. implicating the petitioner before us in sexual assault of the nature contemplated under Section 376AB of the Indian Penal Code, 1860 read with Section 6 of the POCSO Act. Medical examination of the victim was done contemporaneously where, the victim implicated the petitioner before the doctor. The medical examination report also corroborates the claim of the victim.

In such circumstances, we do not find the present application be maintainable.

The application being **CRM (A) 5598 of 2023** is rejected as not maintainable.

**(Debangsu Basak, J.)**

**(Md. Shabbar Rashidi, J.)**

