

31.01.2024
(D/L 26)
Ct. No.1
(Allowed)
(SKB)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

C.R.M.(A) 91 of 2024

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Mathabhanga P. S. Case No.576 of 2023 dated 01.11.2023 under Sections 354/506/34 of the Indian Penal Code read with Section 12/14/15 of the POCSO Act in connection with POCSO Case No.91 of 2023.

In the matter of : Madhab Adhikary @ Madhab
Chandra Adhikary and another
... Petitioners

Mr. Hillol Saha Podder
... for the petitioners

Mr. Saikat Chatterjee,
Mr. Dhiman Sil
... for the State

Mr. Swarup Das,
Mr. Satyajit Paul
... for the defacto complainant

1. Heard learned Counsel for the parties.
2. Learned counsel for the State and learned counsel for the informant oppose the prayer for anticipatory bail.
3. On perusal of the entire materials as placed before us, we find that there are sufficient incriminating materials as against the petitioner no.2 to the effect that he was constantly following, teasing and even tore the dresses of the victim girl when she refused to give her consent to the proposal for love.

4. Considering the entire circumstances, we are not inclined to exercise our discretion under Section 438 Cr.P.C. in favour of the petitioner no.2, Manoj Adhikary.
5. Accordingly, prayer for anticipatory bail for the petitioner no.2 is rejected.
6. Considering the fact that there is no much incriminating materials as against the petitioner no.1, we are inclined to allow his prayer.
7. Regard being had to the facts and submission, factum of permanent residence of the petitioner no.1, nature of allegation, nature of evidence and substantial progress in investigation, it is directed that the petitioner no.1 shall be released on bail by the Arresting Officer in the event of his arrest in the POCSO Case No.91 of 2023 arising out of the aforesaid P.S. case on such terms and conditions as deemed just and proper in the facts and circumstances of the case.
8. Within 21 days from today, petitioners are directed to appear before the IO along with server copy or certified copy of this order.
9. Accordingly, the prayer for the anticipatory bail is partly allowed.
10. The applications being CRM(A) 91 of 2024 is disposed of.

11. The Arresting Officer is hereby directed to act upon the server copy or certified copy of this order.
12. Before parting with the order, we make it clear that though we have rejected the prayer for anticipatory bail so far as petitioner no.2 is concerned, least the discretion exercised by us may not send a negative signal to the society, at the same time, we are conscious of the fact that the petitioner no.2 is a young boy of 20 years old and the reformatory jurisprudence should address him from the very outset.
13. In view of such fact, the petitioner no.2, if so advised, may surrender before the learned ACJM, Mathabhangra within 15 days from today and file application for bail with a five days' prior notice to the learned PP/APP attached to the said court and the said application for bail shall be disposed of on merit on the selfsame day in accordance with law by referring to the CD.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)