

01.02.2024
(D/L 9)
Ct. No.1
(Allowed)
(SKB)

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

C.R.M.(A) 99 of 2024

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Tufanganj P. S. Case No.1104 of 2023 dated 17.12.2023 under Sections 448/506 of the Indian Penal Code read with Sections 6/18 of the POCSO Act in POCSO Case No.64 of 2023.

In the matter of : Jayanta Das

... Petitioner

Mr. Hillol Saha Podder

... for the petitioner

Mr. Nilay Chakraborty,
Mr. Sagnik Sankar Sikdar

... for the State

1. Affidavit of service filed in court today is taken on record.
2. Heard learned advocates for the parties.
3. Taking a cue from the statement of the victim recorded under Section 164 Cr.P.C., learned counsel for the State objects to release of the present petitioner on anticipatory bail on the ground that there has been penetrative sexual assault by the present petitioner.
4. Considered the materials placed by learned counsel for the parties including the FIR, statement of the witnesses recorded under Section 161 Cr.P.C., statement of the victim recorded under Section 164 Cr.P.C. through interpreter and medical examination report in respect of the victim.

5. The mother of the victim is the informant.
6. In the FIR, it is alleged that the petitioner entered into the house of the victim, touched different part of the body of the victim inappropriately and made attempt to ravish her.
7. In a statement recorded under Section 164 Cr.P.C. through interpreter, the victim has alleged her ravishment which is, however, not indicative of penetrative assault as found from the injury report of the victim. Before the medical officer also the mother of the victim girl, in the history of the case, has stated that on the occurrence day, the petitioner entered into their house and touched the victim's breast and when victim girl raised sound, the petitioner fled away.
8. In view of such discrepancy in various statements, we cannot accept the allegation of penetrative sexual assault, *prima facie*, at this stage. Therefore, this fact should be left to the trial court to be decided on evidence of prosecution.
9. Regard being had to the facts and submission, factum of permanent residence of the petitioner, nature of allegation, nature of evidence and substantial progress in investigation, it is directed that the petitioner shall be released on bail by the Arresting Officer in the aforesaid P.S. case on such terms and conditions as deemed just

and proper in the facts and circumstances of the case including the conditions:

- i) Petitioner is directed to appear before the IO once in a week on the day and time fixed by the IO for the purpose of investigation till submission of Final Form.
 - ii) Petitioner shall not threaten, induce or coerce any witness of this case in any manner whatsoever during the currency of this order.
10. Within 21 days from today, petitioner is directed to appear before the IO along with server copy or certified copy of this order.
 11. Accordingly, the prayer for the anticipatory bail is allowed.
 12. The applications being CRM(A) 99 of 2024 is disposed of.
 13. The Arresting Officer is hereby directed to act upon the server copy or certified copy of this order.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)