

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

04.04.2024
Court No.01
PA rp/ 02

CRM (A) 223 of 2024

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure;

And

In Re: Tazel Ali @ Tajel Ali

- Petitioner

Mr. Subhasish Misra,
Mr. Satyajit Paul
...for the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Sourav Ganguly
...for the State.

This is an application under Section 438 of the Code of Criminal Procedure filed by the petitioner Tazel Ali @ Tajel Ali who is an accused in Tufanganj Police Station Case No. 124 of 2023 dated 23-02-2023 under Sections 498(A)/ 326/ 307/ 376/ 506/109 of the Indian Penal Code. The petitioner apprehending arrest in the said case has come up with the instant application. A complaint was lodged by complainant on 23-02-2023 before Tufanganj P.S. The *de facto* Complainant contended in the complaint that she was married with Nijan Ali under Muslim Shariat 3 years ago. After marriage they were living as husband and wife and a baby was born of the wedlock. The *de facto* Complainant alleged that her father at the time of her

marriage gave furniture, cash and ornaments. She further alleged that she was tortured by her husband physically and mentally to demand money from her father. It was also contended that Tazel Ali, the petitioner herein gave ill proposal to the complainant and on 15-02-2023 at about 16.00 hours while the Complainant was alone at her bedroom, the petitioner being the elder brother of her husband committed rape upon her against her will. On the same day she disclosed the matter to her husband and her husband assaulted her, and on protesting such acts, her husband, father-in-law and uncle-in-law forcefully administered poison in her. She became unconscious and was admitted to Coochbehar Mission hospital by her in-laws. After admission, her in-laws left the hospital. Her paternal relations visited the hospital and after her recovery got her discharged and took her to her father's house, where she is presently residing. On the basis of this Complaint Toofanganj P.S. Case No. 124/2023 under Sections 498A/326/ 307/376/506/109 IPC was instituted and investigation taken up. During the course of investigation accused Nijan Ali was arrested and is now on bail. Seven other accused persons of this case surrendered

and were enlarged on bail. The petitioner has come up with the instant application under Section 438 of the Code of Criminal Procedure.

It is the contention of the Petitioner that he never committed rape upon the *de facto* complainant. The complainant herself consumed poison and the best reason for doing so was itself known to her. It is further contended that the petitioner alongwith the husband of the *de facto* complainant, who is accused no.1 tried their best to save the *de facto* complainant and admitted her to Cooch-Bihar Mission Hospital for treatment. The *de facto* Complainant after recovering lodged the present complaint against the petitioner and her family members. It is also contended that the *de facto* complainant in an utter revengeful manner with extreme grudge and vengeance lodged the complaint which is nothing but a projection of fake allegation against the petitioner with a motive to harass.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party / State of West Bengal. Perused the petition filed and materials in the case diary.

Learned Advocate for the petitioner submits that his client is falsely implicated in this case although he is not involved. Learned Advocate further submits that other accused persons are on bail and the prayer of the petitioner for anticipatory bail be considered. Learned Advocate for the opposite party objects the grant of bail and submits that there are materials showing involvement of the petitioner in the offence.

Upon hearing the Learned Advocates and upon considering the materials in the case diary, it appears that the allegation of torture and administering poison forcefully upon the *de facto* complainant is levelled against all the accused persons including the petitioner. Thus, the point for consideration with regard to grant of bail to the co-accused persons was whether there was sufficient materials against the accused persons showing involvement in the offence under Section 498A, Section 326 and Section 307 of the Indian Penal Code. It is the case of the complainant that the accused persons got her admitted to Coochbehar Mission hospital but it is alleged by her that the accused persons by force administered poison upon her. However, upon perusal of the report of

Mission Hospital Cooch Behar it appears that the patient/*de facto* complainant was brought to Emergency of the said hospital with alleged history of self suicidal ingestion of insecticide, named ULFA at her residence following argument with her husband. On clinical examination following details were found:

- A. Patient was partially conscious
- B. No Sign of Physical assault/any other external injury at the time of examination.
- C. Chest bleed (+) eyes.sisc. (+) Pupil B/C NS.
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Hence upon considering the report of Mission Hospital, it will appear that there was sufficient ground to grant bail to the co-accused persons, who were alleged to have committed offence under Sections 498A, 326, 307, 506 and 109 of the Indian Penal Code but so far the petitioner is concerned there is specific allegation of committing offence under Section 376 IPC.

Now the question for consideration is whether the petitioner should be favoured with an order of anticipatory bail. In this regard our attention is drawn to the statement u/s-164 Cr.P.C. made by the *de facto*

complainant/victim, and the medical examination report of the victim. So far statement under Section 164 Cr.P.C. is concerned, the *de facto* complainant/victim has simply mentioned about committing rape as stated in the Complaint without giving particulars as to how the alleged offence has taken place. Upon perusal of the medical examination report there appears no external injury on the body and genital area of the victim girl. Moreover the investigating authority has also not collected the wearing apparels of the victim.

In the instant case although there are allegations against the petitioner but considering the materials in the case diary and stage of investigation, we are of the view that custodial interrogation is not required and as there is no reasonable apprehension that the petitioner may abscond, he should be granted anticipatory bail.

Hence, it is ordered that the petitioner be released on bail in the event of his arrest with 2 sureties of Rs.10,000/- each, one of which must be local subject to the satisfaction of the arresting officer and subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 with a further condition that

the petitioner on being released shall meet the I.O. once in a week till the conclusion of the investigation and shall not meet the persons acquainted with the facts of the case and shall not do any act prejudicial to investigation.

He shall also attend the learned trial court on all the dates.

It is made clear that in the event the petitioner fails to comply with any of the aforesaid directions, without justifiable cause, the learned Court below shall be at liberty to cancel his bail without any further reference to this Court.

The application for anticipatory bail, being CRM (A) 223 of 2024, is disposed of.

The case diary has been returned to Mr. Ganguly, the Learned Advocate appearing for the State.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Biswaroop Chowdhury, J.)

(Tapabrata Chakraborty, J.)