

12.06.2024
(D/L 3)
Ct. No.1
(Allowed)
(SKB)

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

C.R.M.(A) 429 of 2024

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Mekhliganj P. S. Case No.295 of 2023 dated 06.09.2023 under Sections 365/376/506 of the Indian Penal Code (G.R. Case No.631 of 2023) pending in the court of the learned Additional Chief Judicial Magistrate at Mekhliganj.

In the matter of : Kamal Barman

... Petitioner

Mr. Biswarup Roy,
Ms. Supriya Debnath

... for the petitioner

Mr. Aditi Shankar Chakraborty, ld. APP,
Mr. Chattu Roy

... for the State

1. Heard learned Counsel for the petitioner and the learned APP.
2. The informant has alleged that she was threatened with life and out of such fear, she along with her two children has gone to meet the petitioner whereafter he has taken her away and she has been subjected to repeated rape in between 27.8.2023 to 06.9.2023, being the date of lodging of the FIR.
3. Learned counsel for the petitioner submits that both the petitioner as well as the informant are married persons. They were having a consensual relationship and for extraneous consideration, she has lodged the FIR against the petitioner who is a man of clean antecedent.

4. The learned APP has opposed the prayer for anticipatory bail. It is submitted that the informant has been examined and she has supported the prosecution case and that investigation is still going on.
5. Considering the rival submissions and upon going through the case diary, we find that there is a stark variance between allegations levelled by the informant in the FIR, with that which has been recorded under Section 164 Cr.P.C. while she has stated in the FIR that she went to meet the petitioner due to fear as he had threatened her with dire consequences; in her statement under Section 164 Cr.P.C. a different reason has been assigned. Both the petitioner as well as the informant are quite mature and married persons.
6. We make it clear that the observations/findings recorded above are for the limited purpose of consideration of the petitioner's prayer for bail and shall not have any persuasive value, otherwise.
7. The petitioner has given an undertaking that he shall cooperate with the investigation and present himself at the call of the Investigating Officer as and when required. Considering these circumstances, as also clean antecedent of the petitioner, we find that it is a fit case where the petitioner is entitled to privilege of anticipatory bail.

8. In view of such facts and submission, it is directed that the petitioner shall be released on bail by the Arresting Officer in the event of his arrest in the G.R. Case No.631 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.
9. Accordingly, the prayer for the anticipatory bail is allowed.
10. Within 15 days from today petitioner is directed to appear before the I.O. along with a server copy or certified copy of this order.
11. The application being CRM(A) 429 of 2023 is disposed of.
12. The Arresting Officer is hereby directed to act upon the server copy or certified copy of this order.

(Madhuresh Prasad, J.)

(Partha Sarathi Chatterjee, J.)