

05.12.2024
Ct. No. 01
SL No. 54
Cp
Rejected

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

CRM (A) No. 867 of 2024

In Re: - An application for anticipatory bail under section 438 of the Code of Criminal Procedure, 1973/Section 482 of the B.N.S.S.

And

In the matter of: Md. Shamshir Raza Khan @ Shamshir Raza@ Prince
.....petitioner.

Mr. Ranjit Singh
... for the petitioner
Mr. Abhijit Sarkar
Mr. Sanjiv Das

.....for the State.
Mr. Hillol Saha Podder

.....for the de facto complainant.

1. The petitioner submits that he has been falsely implicated in this case. He submits that there was a friendship between the petitioner and the victim and both were on talking terms with each other. He also submits that suddenly the family members of the victim started pressurizing the petitioner to marry the victim, or else, he should pay a lumpsum amount of Rs.10 lakhs. He submits that there is a medical report which does not suggest any forceful sexual penetration or like offence. He relies on a decision in the matter of Pratap Misra & Ors. vs. State of Orissa, reported in AIR 1977 SC 1307. Drawing our attention to a quotation made in the said decision from the Principles and Practice of Medical Jurisprudence, Vol-II, he seeks to impress

upon us that if any such offence is committed upon a full grown girl, it is expected that she will resist and there must be some evidence of struggle to avoid such sexual assault. Absence of such evidence will lead to an uncertainty or create a doubt to the claim of the prosecution. He submits that taking note of this fact, the benefit of pre-arrest bail should be extended.

2. Learned advocate representing the de facto complainant vehemently opposes such prayer. He submits that some photographs were taken at the time of commission of the offence, which is still lying in the possession of the accused. Hence, his custodial interrogation is required. These incriminating materials are required to be recovered from the possession of the petitioner.
3. Learned advocate for the State vehemently opposes the prayer of the petitioner for grant of anticipatory bail. He submits that the facts and circumstances of the present case indicate that custodial interrogation of the petitioner is very much required and if the privilege of pre-arrest bail in respect of such serious and heinous offence is extended to the petitioner, a wrong signal will be sent to the society.
4. Heard the learned advocates for the respective parties. Perused the case diary and other materials including the medical report and the statement of the victim recorded under Section 164 of the Cr.P.C. Such statement indicates, prima facie, involvement of the petitioner in the alleged offence.

5. That apart, considering the nature of the allegation as reflected in the FIR which speaks about the photographs of the sexual act, we are not in a position to hold that his custodial interrogation will not be necessary. A decision is an authority for what it decides, and not for what logically follows from it. A slight variation in the facts can make a world of difference. The decision placed before us has no manner of application in the present case.
6. Accordingly, the prayer for pre-arrest bail is rejected.
7. The application is, thus, disposed of.

(Partha Sarathi Chatterjee, J.)

(Shampa Sarkar, J.)