

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

03.01.2024
JPD 13
Sws.M
ct.1

C.R.M. (A) 1027 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 in connection with Banarhat Police Station Case No. 315/2023 dated 19.11.2023 under Sections 498A/306 of IPC.

Allowed

In the matter of : Saddam Khan & Ors.

..... Petitioners

Mr. Jaydeep Kanta Bhowmik
Mr. Sayantan Bhowmik
Mr. Shubham Kumar
Ms. Rikta Sarkar

...for the Petitioners

Mr. Ujjwal Luksom
Ms. Namrata Das

...for the State

Heard Mr. Jaydeep Kanta Bhowmik, learned counsel for the petitioners and Ms. Namrata Das, learned State Advocate.

This is the first anticipatory bail application under Section 438 of the Code of Criminal Procedure filed by the accused persons for anticipatory bail in connection with the First Information Report No. 315/2023 dated 19.11.2023 under Sections 498A/306 IPC, P.S. Banarhat, District – Jalpaiguri in relation to the commission of offence on 16.11.2023 at about 12.45 hours. The place of occurrence is about 13 km. north to the police station, in New Chamurchi Check Post. The deceased is Amina Khatun and the

informant is the brother of the deceased, namely, Halijan Ansari son of Basir Ansari, resident of New Chamurchi Check Post, PS – Banarhat, District – Jalpaiguri. The husband of the deceased, namely, Sohel Khan, son of Farbar Khan was arrested on 19.11.2023. Charge-sheet has not yet been filed.

The petitioner No. 1, Saddam Khan is the brother in law, petitioner No. 2, Farwar Khan @ Farbar is the father-in-law, petitioner No. 3, Sabana Khatun @ Khatoon is the daughter of Farbar Khan is the married sister-in-law and petitioner No. 4, Nurida Khatun @ Nureda, wife of Farbar Khan, is the mother-in-law of the deceased.

As per postmortem report, there is no external or internal injury on the body of the deceased and the cause of death is shown as “death was due to effects of ingestion of some poisonous substances.” The Investigating Officer has recorded the statement of some witnesses under Section 161 Cr.P.C., who have stated that the deceased was tortured and on account of torture she consumed poison. In the FIR allegation of torture and demand of dowry has been made by the informant without any specific allegation against any specific accused.

Learned counsel for the petitioners submits that the petitioners have been falsely implicated. They are innocent and have no role in the incident in question. Neither any specific allegation against the petitioners in the FIR nor any

evidence including statement under Section 161 Cr.P.C. indicates any specific allegation or role of the petitioners. The accused father-in-law and mother-in-law are old persons while the sister-in-law of the deceased is a married one and all the accused persons residing separately from the deceased and the accused husband. It is further submitted that no case has been made out against the petitioners and yet the petitioners undertake to cooperate in investigation in the afore-noted criminal case, but they should not be arrested.

Learned State advocate submits that as per FIR the allegation is that all the accused persons have tortured the deceased which resulted in commission of suicide by the deceased by consuming poison. Since the investigation is in process, therefore, it would not be appropriate to grant anticipatory bail to the petitioners. She further submits that there was abatement to commit suicide and as such the accused persons are *prima facie* guilty of the offence under Section 306 IPC.

We have heard learned counsel for the parties and carefully considered their submissions and also perused the Case Diary as produced by the learned State advocate.

Prima facie, we find that no specific allegation against the present petitioners has been made in the FIR indicating abatement by them to the deceased for commission of suicide. Despite being repeatedly asked, learned State

advocate could not point out any material in the Case Diary to indicate that the present petitioners are residing in the same house where the deceased and her husband, i.e. the accused Soheli Khan was residing or have a common mess. The petitioner No. 3, Sabana Khatun @ Khatoon is the married sister-in-law but it could not be stated by learned State advocate on the basis of any evidence collected by the Investigating Officer that she was residing with the deceased in the same house at the time of commission of offence.

On an overall prima facie assessment of the nature of allegations against the petitioner, we are of the view that immediate custodial interrogation of the petitioner may not be necessary so long as he is prepared to cooperate in future investigation, if any.

Considering all the facts and circumstances of the case and the stage of investigation and without commenting on merits of the case, anticipatory bail is granted to all the accused petitioners, namely, 1. **Saddam Khan**, 2. **Farwar Khan @ Farbar**, 3. **Sabana Khatun @ Khatoon**, and 4. **Nurida Khatun @ Nureda** in relation to afore-noted FIR No. 315/2023 dated 19.11.2023 under Section 498A/306 IPC, P.S. Banarhat, District – Jalpaiguri, subject to the following conditions: -

- (i) In the event of arrest, the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount

each, one of whom must be local, to the satisfaction of the Chief Judicial Magistrate, Jalpaiguri and shall abide by the conditions laid down in Section 438(2) of the Code of Criminal Procedure until further orders.

- (ii) In the event the petitioner fails to adhere to any of the conditions stipulated in Section 438(2) of the Code of Criminal Procedure, the learned Court below will be at liberty to cancel the anticipatory bail without further reference to this Court.

The application for anticipatory bail being CRM (A) 1027 of 2023 is, thus, allowed.

Urgent certified copy of this order, if applied for, be supplied to the learned counsel for the respective parties.

(Rai Chattopadhyay, J.)

(Surya Prakash Kesarwani, J.)