

04.01.2024
SL No.30
Court No.1
(srimanta)
(Allowed)

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRM (A) 1048 of 2023

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed in connection with New Jalpaiguri Police Station Case No.1026 of 2023, dated 28.10.2023 under Section 498A/302 of the Indian Penal Code, 1860 read with Section 3/ 4 Dowry Prohibition Act corresponding to GR Case No. 5609 of 2023 pending before the Learned Chief Judicial Magistrate, Jalpaiguri.

And

In the matter of : **Anita Sarkar & Anr.**

- Petitioners.

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

... For the Petitioners.

Mr. Aditi Shankar Chakraborty

...for the State

Heard Mr. Jaydeep Kanta Bhowmik, learned Counsel for the petitioners and Mr. Aditi Shankar Chakraborty, learned Counsel for the State.

This petition under Section 438 of the Code of Criminal Procedure has been filed for anticipatory bail in connection with New Jalpaiguri Police Station Case No. 1026/2023 dated 28.10.2023 under Sections 498A/302 of Indian Penal Code read

with Section 3/ 4 of the Dowry Prohibition Act corresponding to G.R. Case No. 5609/2023.

As per prosecution case, incident in question took place on 24.10.2023 and the First Information Report under Section 302 of the Indian Penal Code was lodged on 28.10.2023. The charge-sheet has been submitted under Sections 448A/306 of the Indian Penal Code.

As per First Information Report lodged by Kartick Sen (father of the deceased) her daughter, namely, Mamoni Sarkar got married to one Gobinda Sarkar, resident of Village & Post – Garodokan, P.S.-Abhaypuri, Dist. – Bangaigaon, Assam in the year 2016 and it was a love marriage. As they (Mamoni sarkar and Gobinda Sarkar) fled away together and after marriage the daughter was residing at her maternal house for two years and for another two years at her place (paternal house) and since then the son-in-law used to torture his daughter both physically and mentally for the demand of dowry and the torture increased day by day and in between the time she gave birth to a female child in the year 2021. It has also been alleged in the aforesaid First Information Report that torture started increasing day by day by instigation of her in-laws, i.e., her mother-in-law, Smt. Anita Sarkar and sister-in-law, Smt. Rinku Sarkar as she could not gave birth to a male child and ultimately the entire family had shifted to Siliguri Sub-Division area in the year 2021. It has further been alleged in the First Information Report that on 24.10.2023 at

about 6.00 a.m.in the morning his son-in-law, Gobinda Sarkar called him over phone and told that his daughter, i.e. Mamoni Sen has committed suicide by hanging herself and he reached at the place of occurrence at around 11 O'clock in the night. It has further been mentioned in the FIR that some symptoms were visible on the external part of the dead body indicating unnatural death and not suicide.

Perusal of the First Information Report prima facie indicates that the deceased lived with her husband, Gobinda Sarkar for two years separately and thereafter for another two years at her parents' house, i.e. the house of the informant. The main allegation of torture as per FIR is against the husband, i.e. Gobinda Sarkar. It is only for the period subsequent to the year 2021 that an allegation of torture on account of instigation by the present petitioner has been made. This prima facie indicates that the torture was mainly by Gobinda Sarkar, i.e. the husband of the deceased and the role assigned in the FIR to the present petitioners is to instigate Gobinda Sarkar for torturing the deceased. The petitioner no. 1 is the mother-in-law of the deceased and the petitioner no. 2 is the siser-in-law, who according to the learned Counsel for the petitioners, is the student of BA (Third Year).

Learned Counsel for the petitioners states that the petitioners shall always present themselves before the Investigating Officer, if required, for any investigation and they shall fully cooperate, if

any investigation is still required in the aforesaid criminal case. The petitioners may not be arrested as the career of the petitioner no. 2 as student and an unmarried girl would completely ruin even without her involvement in the commission of the aforesaid offence.

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 the accused petitioners, namely, **Smt. Anita Sarkar** and **Smt. Rinku Sarkar** in relation to afore-noted New Jalpaiguri Police Station Case No. 1026 of 2023 dated 28.10.2023 under Sections 498A/302 of the Indian Penal Code, 1860 read with Sections 3/ 4 of the Dowry Prohibition Act corresponding to G.R. Case No. 5609 of 2023, subject to the following conditions:-

- (i) In the event of arrest, the petitioners 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 petitioners fail 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) 1048 of 2023 is, thus, allowed.

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

(Surya Prakash Kesarwani, J.)

(Ray Chattopadhyay, J.)