

11.08.2025
Item No.26
Ct. No. 446
RP
Allowed

C.R.M.(A) 2747 of 2025

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 corresponding to Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in connection with **Joynagar** Police Station Case No. **858** of **2024** dated **29.10.2024** under Section 376(2)(n) of the Indian Penal Code read with Section 6 of POCSO Act read with Section 9 of Prohibition of Child Marriage Act pending before the learned Judge, Special Court under POCSO Act, Baruipur, South 24 Parganas.

And

In the matter of : XXXX

..... petitioner

Ms. Ayasha Najrin

Mr. Safiqul Islam Mondal

....for the petitioner

Mr. Sanjay Bardhan

Mr. Raju Jana

....for the State

Mr. Habibur Rahaman

Mr. Manik Das

...For the victim lady

1. Affidavit-of-service filed in Court today be kept on record.
2. Heard the submissions of both the learned advocates for the parties.
3. The case was initiated on the basis of a Zero F.I.R alleging commission of offence under section 6 of POCSO Act of 2012 read with section 9 of Prohibition of Child Marriage Act . In course of investigation the victim girl recorded her statement under Section 183 BNSS which manifests the case of romantic relationship between the parties.

They got married and ultimately she conceived and gave birth to a child on 22.1.24.

4. Similar issue has been time and again considered by the Hon'ble Supreme Court in various decisions where it has been observed that where there is no case of coercion or influence or abuse against the victim when the act is voluntary and a girl aged about 17 years has had a romantic relationship with the accused and they are at present leading a happy conjugal life the criminal justice system should not be weaponized to punish emotional intimacy. In view of the facts and circumstances stated above and in absence of any such incriminating materials as discussed above considering the statement recorded under section 183 of BNSS this Court is inclined to extend the benefit of Section 482(2) of BNSS to the petitioner to protect their marital life . Unfortunately the provision of POCSO Act attracted as victim girl was aged about 17 years at the time of marriage and in the eye of law the consent given by her is no consent at all but such relationship cannot be considered unnatural specially when they have become parents and duty lies upon them to maintain the child.
5. Accordingly, this Court is inclined to grant anticipatory bail to the petitioner subject to fulfillment of conditions the conditions laid down in Section 482(2) BNSS.

6. In the event of arrest, the petitioners shall be released on bail upon furnishing a bond of Rs.5,000/- (Rupees Five Thousand only), with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 482(2) of the BNSS and in case of violation of any of such provision the prosecution will be at liberty to pray for cancellation of anticipatory bail granted without further reference to this Court.
7. This application for anticipatory bail is, thus, disposed of as allowed.

(Chaitali Chatterjee (Das), J.)