

IN THE HIGH COURT OF JHARKHAND AT RANCHI
A.B.A. No. 3049 of 2020

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| Sandeep Kumar @ Sandeep Kumar Saw | ... | |
| | Versus | Petitioner |
| The State of Jharkhand | ... | Opposite Party |

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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| For the Petitioner | : | Mr. Rajiv Kr. Karan, Advocate |
| For the State | : | Mr. M.D. Hatim, Addl. P.P. |

Order No.02 Dated- 09.09.2020

Apprehending his arrest, the petitioner has moved this Court for grant of privilege of anticipatory bail in connection with Sadar P.S. Case No.90 of 2020 registered under sections 417/376 of the Indian Penal Code and under section 8 of the POCSO Act.

Heard the learned counsel for the petitioner and learned Addl. P.P. for the State through video conferencing.

The learned counsel for the petitioner personally undertakes to remove the defects as pointed out by the stamp reporter, within two weeks after the lockdown period is over.

In view of the personal undertaking of the learned counsel for the petitioner, the defects pointed out by the stamp reporter are ignored for the present.

The Learned counsel for the petitioner submits that the allegation against the petitioner is that the petitioner has committed rape upon a girl of 14 years alluring her for marriage and continued to have sexual relationship with her for six months. It is further submitted that the allegation against the petitioner are all false and the petitioner has no criminal antecedent as has been mentioned in paragraph no. 8 of the anticipatory bail application. Hence, it is submitted that the petitioner be given the privilege of anticipatory bail.

Learned Addl. P.P. on the other hand vehemently opposes the prayer for grant of anticipatory bail and submits that in view of the amended Section 438(4) of the Cr.P.C., the provisions of Section

438 is not applicable to in cases involving the offence committed under Section 376(3) I.P.C. It is next submitted that as undisputedly, the victim is of 14 years of age, hence her consent is immaterial and the offence alleged is undisputedly the one punishable under section 376(3) I.P.C. It is next submitted that keeping in view the serious nature of the offence involved in this case, the custodial interrogation of the petitioner is required during the investigation of the case. Hence, it is submitted that the petitioner ought not to be given the privilege of anticipatory bail.

Considering the serious nature of allegation against the petitioner and the heinous offence alleged to have been committed by the petitioner under Section 376(3) I.P.C. and in view of the bar under section 438(4) Cr.P.C., this Court is of the considered view that this is not a fit case where the above named petitioner be given the privilege of anticipatory bail. Accordingly, the prayer for grant of privilege of anticipatory bail of the petitioner is rejected.

(Anil Kumar Choudhary, J.)

Sonu-Gunjan/