

30.05.2022
(vacation
Bench)

Court No.5
Item No.88
(Rejected)

Saswata

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

CRM (A) 2444 of 2022

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with Manikchak Police Station Case No. 412 of 2021 dated 12/10/2021 under Sections 417/376 of the Indian Penal Code ;

And

In the matter of : **Nemai Mondal @ Nimai Mondal.**

...Petitioners

Mr. Arnab Saha

...For the Petitioners

**Md. Anwar Hossain
Mr. Manoranjan Mahato**

... for the State

This is an application for anticipatory bail.

The petitioner has been accused of being the biological father of a male child of the *de facto* complainant born out of no valid marriage. The petitioner denies the allegation and says that necessary DNA test may be conducted to ascertain the parenthood of the male child.

The petitioner also refers to Section 311 of the Cr.P.C., 1973 to impress upon this Court that while hearing an application for anticipatory bail may direct for conducting DNA test and call for the report.

The consideration before us is whether the petitioner can be granted anticipatory bail or not. We are precluded from going into the merits of the case at this stage.

The statement of the *de facto* complainant recorded under Section 164 of the Cr.P.C. clearly indicates the name of the petitioner. At this

stage, if this Court has to venture upon the merits of the matter, it will not only amount to usurping the powers of the trial Court but also may influence the investigation and the trial. The materials disclosed in the case diary, the allegations made against the petitioner and the gravity of offence persuade us not to grant anticipatory bail, prayed for by the petitioner.

Accordingly, the prayer for anticipatory bail stands ***rejected***.

CRM (A) 2444 of 2022 is dismissed.

(Arindam Mukherjee, J.)

(Subhendu Samanta, J.)