## **Bail Application No. 70 of 2019**

Present: Sri S.K. Poddar, Sessions Judge, Sivasagar.

## 29.04.2019

Learned Advocate for the accused-petitioner is present.

Called for Case Diary is not received.

Heard learned Advocate for both the sides.

This is a bail application U/S 438 CrPC filed by petitioner **Md. Mustakur Rahman** @ **Raj** for grant of pre-arrest bail in connection with Sivasagar P.S. Case No.241/2019 U/S 376(3) of IPC R/W Section 4 of POCSO Act.

Before start of hearing on the bail application, learned P.P. has raised objection on the point of maintenance of the bail application in view of Section 438(4) of CrPC.

I have gone through the relevant provision of Section 438(4) of CrPC. It provides that "Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code". On going through the FIR, it appears that the case was registered U/S 376(3) of IPC R/W Section 4 of POCSO Act.

In view of the provisions of Section 438(4) of CrPC, which was came into effect from 21.04.2018, I am of the considered opinion that the prayer for prearrest bail is not maintainable.

As such, prayer of bail U/S 438 of CrPC for the accused-petitioner Md. Mustakur Rahman @ Raj stands rejected.

This Bail Application is disposed accordingly.

Sessions Judge, Sivasagar