

**Court No. - 73**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 6158 of 2023

**Applicant :-** Anoop Kumar

**Opposite Party :-** State Of U.P. And 3 Others

**Counsel for Applicant :-** Vishesh Kumar

**Counsel for Opposite Party :-** G.A.,Anil Kumar Tripathi

**Hon'ble Nalin Kumar Srivastava,J.**

1. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for the informant and perused the record.
2. This application has been moved on behalf of the applicant - **Anoop Kumar** seeking anticipatory bail in Case Crime No.65 of 2022 (S.S.T. No.337 of 2022), under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act, Police Station - Mauaima, District - Allahabad (Prayagraj).
3. The minor daughter of the informant was induced by named accused persons including the present applicant and when she was untraced, F.I.R. was lodged on 15.2.2022 under Sections 363, 366 IPC. Subsequently, during the course of investigation, the matter was converted into Sections 363, 366, 376 IPC and Section 3/4 POCSO Act.
4. It is submitted by learned counsel for the applicant that the victim of this case was a major lady on the date of occurrence. She was a consenting party to the relationship with the applicant. The school leaving certificate showing the real date of birth of the prosecutrix, as submitted by the applicant, is a genuine document. It is further submitted that there is no evidence at all on record that the present applicant ever committed any rape to the victim of the case. It is also submitted that after lodging of the F.I.R., Crl. Misc. Writ Petition No.2081 of 2022 was moved by the victim herself along with the accused persons and a protection was granted to them by this Court till submission of police report u/s 173 (2) Cr.P.C. or till the next date of listing which ever is earlier vide order dated 22.3.2022. The said protection was extended for a period of two months, but subsequently Crl. Misc. Review Application No.8 of 2022 was preferred by the informant

challenging the aforesaid order dated 8.9.2022, but no relief was granted to him in the matter of review application. It is also submitted that no internal examination of the victim took place, hence the medical evidence does not support the prosecution version. A perusal of the statements of the victim recorded u/s 161 and 164 Cr.P.C. clearly indicate that she was a consenting party and she was never kidnapped by the present applicant. It is further submitted that as a matter of fact, they both have performed marriage with each other with their own free will and consent. It is also submitted that anticipatory bail application moved by the applicant before the Sessions Court was rejected on 13.4.2023 and anticipatory bail application for same relief has been filed before this Court on 23.5.2023 whereas a process u/s 82 Cr.P.C. against the applicant is said to be issued on 12.6.2023. Charge-sheet in this matter was submitted on 17.11.2022. In support of his contention, learned counsel has placed reliance on the recent pronouncement of the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, decided on 29.8.2023 wherein the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated.

5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been submitted that the victim was minor on the date of occurrence. The school leaving certificate showing the date of birth of the victim, as submitted by the applicant, has been verified by the I.O. from the school concerned during investigation and it was found that the age certificate was forged and on the basis of this fabricated document, a protection was also obtained from this Court. It is further submitted that the school leaving certificate collected by the I.O. during the investigation goes to show that the date of birth of the victim was 28.3.2005 and since the offence has been committed on 13.2.2022, the victim was very well minor on the date of occurrence and that is why the charge-sheet has been submitted under the POCSO Act. It is further submitted that if the prosecutrix has given her consent to the physical relationship with the applicant, it has of no legal value because she was a minor. It is further submitted that in Application u/s 482 Cr.P.C. No. - 9015 of 2023, it was directed to the applicant to surrender before the court concerned within a period of 30 days, but the said protection was also not followed by the applicant.

6. To counter this specific argument on behalf of the State, reliance has been placed upon the decision of the Hon'ble Supreme Court in Vinod Kumar Sharma Vs. State of U.P. & Another, S.L.P. No.6057 of 2021, order dated 16.11.2021 wherein it has been held

that -

*"In the said order granting bail, this Court had observed that, after charge sheet is filed, it is open for the petitioners to surrender and apply for the Regular Bail before the Competent Court. After filing the charge sheet, when application for grant of anticipatory bail is filed, impugned order is passed based on the observation made by this Court, in the earlier order. Merely because it was kept open for the petitioners to surrender and apply for Regular Bail after filing of the charge sheet, the same does not preclude the petitioners to apply for anticipatory bail under Section 438 Cr.P.C. after filing of the charge sheet. It also cannot be said, that same is a second application for grant of anticipatory bail as pleaded by learned counsel appearing for respondents, on the same cause of action. Further it is also brought to our notice that the husband of the deceased was granted Regular Bail after he was arrested. This Court while issuing notice also granted protection to the petitioners from arrest."*

7. It is further submitted that in view of the aforesaid order of the Hon'ble Supreme Court, the petitioner has availed his legal right to approach the Court for grant of anticipatory bail.

8. Considering the submissions made by learned counsel for the applicant and also taking into account that the punitive process was issued against the applicant by the court concerned during the pendency of the anticipatory bail application before this Court, in my view, an exceptional case exists in favour of the applicant for consideration of application for anticipatory bail moved by him because the process under section 82 Cr.P.C. was issued against the applicant during pendency of the present anticipatory bail application before this Court and at the time of consideration of his application for grant of anticipatory bail by the Sessions Court, he was not a proclaimed offender. Hence the present application is well maintainable before this Court as a rare and exceptional case in the light of the law laid down by the Hon'ble Apex Court in *State of Haryana vs. Dharamraj*, 2023 SCC Online SC 1085, decided on 29.8.2023.

9. So far as the factual matrix of this case is concerned, the victim of this case appears to be minor on the date of occurrence. No doubt, minor's consent has no legal value in the eyes of law, but present is a peculiar case where the minor victim and the applicant have performed marriage with each other and the victim is living with her husband, the applicant. This Court feels that the Courts are flooded with the matters like the present one where physical

relations are being developed between the persons of opposite sex where one of the partner is minor. Even if the law does not recognize such a relation where one of the person is a minor, but it might become a social and legal challenge to the Society and the legal field as well where the minor prosecutrix with her free will and consent not only performs marriage with the major boy, but also develops pregnancy or gives birth to child. It is a high time when a progressive legal approach is undoubtedly required in such type of matters. So far as the present case is concerned, during investigation, interim protection was granted to the applicant, which was not misused by him and the I.O. of the case never required the arrest of the present applicant during investigation and now after submission of the charge-sheet, no custodial interrogation of the present applicant is required in the matter and in the peculiar facts and circumstances of the case, I am of the view that anticipatory bail may be granted to the present applicant.

10. Although charge-sheet has been submitted in this matter, but in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

11. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

*"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section*

*170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87CrPC that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.*

*12. Insofar as the present case is concerned and the general principles under Section 170CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."*

12. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till end of the trial in the matter.

13. The anticipatory bail application is **allowed**.

14. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till end of the trial on his furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The applicant shall make himself available before the court concerned on the date fixed in the matter;

(ii) The applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him / her from disclosing such facts to the Court or to any police officer;

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

15. In case of default of any of the conditions, same may be a ground for cancellation of protection granted to the applicant.

16. It is made clear that the observation made in this order shall in no way affect any view taken by the court concerned or any other authority and it is meant only for the disposal of the present anticipatory bail application.

**Order Date :- 16.11.2023**

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