

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 15336 of 2021

Applicant :- Sarfuddin And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Yogesh Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Rejoinder affidavit filed today is taken on record.
2. Heard learned counsel for the applicants, learned AGA and perused the material available on record.
3. This application for anticipatory bail has been filed by applicants- **Sarfuddin, Aalam & Roshn @ Rohan** in connection with Case Crime No. 155 of 2021, under sections 354-Kha, 323 IPC, Police Station Khajni, District Gorakhpur.
4. It is alleged in the F.I.R. that it is a case wherein the modesty of lady victim was outraged by the present applicants. She supported this version in her statement under Sections 161 & 164 Cr.P.C. F.I.R. was lodged on 10.06.2021 and investigation started which has been culminated into charge sheet.
5. It has been submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. After investigation charge sheet has been submitted in the matter. In case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.
6. It is further submitted that earlier F.I.R. in this matter was lodged under Sections 323, 376, 511 I.P.C. but in her statement under Section 164 Cr.P.C., the prosecutrix has not made any averment that attempt to rape was made by the present applicants against her. It is further submitted that NCR was also lodged from the applicants side against the informant side. It is further submitted that the medical evidence does not corroborate the prosecution version. It is also submitted that it is a case where the

offence levelled against the applicants are punishable with the imprisonment for a maximum period of seven years and charge sheet has been submitted in this matter. It is next submitted that the applicants were granted liberty in this matter by way of anticipatory bail till submission of police report under Section 173 (2) Cr.P.C. and the said liberty was never misused by them. It is also submitted that they are having no criminal antecedent to their credit and as such, they are entitled for anticipatory bail.

7. Learned A.G.A. has opposed the prayer for anticipatory bail. However, he could not dispute this factual aspect that although the F.I.R. was lodged under Sections 323, 376, 511 I.P.C. but now charge sheet has been filed under Sections 323, 354-kha I.P.C. and the liberty of the interim anticipatory bail was never misused by them.

8. In the present case, no custodial interrogation is required in this matter and they have been cooperative with the I.O. during the course of investigation.

9. Although the 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.

10. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants 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 applicants till conclusion of trial in the matter.

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

12. In the event of arrest of the applicants in the aforesaid case crime, they shall be released on anticipatory bail on their 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 applicants 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(ii) The applicants shall not pressurize/ intimidate the prosecution witness.

(iii) The applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

(iv) The applicants shall not leave India without prior permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. concerned.

13. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicants in accordance with law.

Order Date :- 16.10.2023

Shivangi