

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 8750 of 2023

Applicant :- Budhia Devi

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

Counsel for Applicant :- Digvijay Tiwari

Counsel for Opposite Party :- G.A., Ashok Kumar Shukla, Smita Shukla

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed on behalf of applicant in the Court today is taken on record.
2. Despite service of notice, none is present on behalf of the opposite parties.
3. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
4. Apprehending his arrest in Case Crime No. 82 of 2023, under Sections 323, 366A, 376, 120B I.P.C. and section 16/17 Protection of Children from Sexual Offences (POCSO) Act, P.S. Haldi, district-Ballia, the applicant - **Budhia Devi** has filed this anticipatory bail application seeking anticipatory bail in the aforesaid crime number.
5. The minor daughter of the informant was kidnapped by the main accused Suraj Ram and the other named accused persons. The first information report was lodged on 2.5.2023 and the investigation is going on.
5. Learned counsel for the applicant submits that that applicant is innocent and she has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against her. She has been falsely implicated in this matter. He next submits that the specific role has been assigned to the main accused Suraj Ram, who is said to be the son of present applicant. The role of applicant is only to cooperate her son. As the matter of fact that in her statement recorded under Section 164 Cr.P.C. the minor victim has nowhere mentioned even the name of the applicant. He further submits that the victim has not been recovered from any place under the control of the present applicant, rather she has been recovered by the police at Buxar Railway Station. It is lastly

submitted that the applicant is an old lady and she is having no criminal history and as such she is entitled to be enlarged on anticipatory bail. In case the applicant is granted anticipatory bail, she shall not misuse the liberty of bail and would obey all conditions of bail.

6. Learned A.G.A. has vehemently opposed the prayer for anticipatory bail and submitted that the present applicant was cooperating his son in the commission of alleged crime and in this matter the minor prosecutrix was physically exploited and rape was committed with her by the main accused Suraj Ram on the false pretext of marriage.

7. From the perusal of the record it appears that the applicant is an old lady and the only role of cooperation the main accused has been assigned to her. The applicant is having no criminal history on her credit has brought to the knowledge of this Court. Applicant is cooperating with the investigation.

8. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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.

9. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then

there is no compulsion on the officer to arrest the accused.

10. 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 the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

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

12. In the event of arrest of the applicant in the aforesaid case crime, she shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court on her furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(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 her from disclosing such facts to the Court or to any police office.

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

13. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 27.10.2023

Faridul