Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 9713 of 2023

Applicant :- Harsh Kumar
Opposite Party :- State Of U.P. And 3 Others
Counsel for Applicant :- Anurag Shrivastava
Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant **Harsh Kumar** seeking anticipatory bail in Complaint Case No.26 of 2023, under Sections 452, 354, 504 IPC and 7/8 POCSO Act, Police Station Dhampur, District Bijnor.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. It is further submitted that the applicant happens to be the brother-in-law (Nandoi) of the lady complainant and since a matrimonial dispute was going on between the complainant and her in-laws wherein the present applicant was also implicated, the present complaint case has been filed on the basis of false and fabricated grounds. As per the complaint case at the time of the incident the applicant had also made assault upon the complainant and the victim as well but there is no injury report on the record and as a matter of fact the complainant and the victim were not medically examined. It is further submitted that the applicant has been falsely implicated in this case due to family dispute. Applicant has no criminal history to his credit. It is also submitted that in the matrimonial dispute case as well as in this case the parties have entered into a compromise and the complainant herself moved an application in this regard before the trial court. The applicant is ready and willing to cooperate with the trial court. No process under Sections 82 and 83 CrPC has been issued against the applicant and the applicant has not been declared absconder. It has been submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all

conditions of bail. It is further submitted that an application U/S 482 CrPC No. 23294 of 2023 was also preferred by the applicant before this Court wherein no relief was granted to him and the same was disposed of vide order dated 12.7.2023 with the observation that in case the applicant appears before the court concerned within three weeks from the date of the said order and applies for bail, the same shall be heard and disposed of expeditiously, in view of the law laid down by the Apex Court in **Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P. (Crl.) No. 5191 of 2021.**

4. Learned A.G.A. vehemently opposed the prayer for anticipatory bail and submitted that the applicant has been summoned to face trial on the basis of sufficient evidence available against him.

5. In this matter, from the perusal of the record it appears that a sexual assault was committed with the minor victim by the applicant and a complaint case was filed by the complainant, the sister of the victim, wherein the present applicant was summoned to face trial for the offence under Sections 452, 354, 504 IPC and 7/8 POCSO Act by the Special Court, Bijnor vide order dated 3.5.2023. It also reveals that case under POCSO Act is not compoundable and the applicant has been summoned to face the trial on the basis of sufficient evidence collected against him.

6. 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.

7. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

8. The application is **rejected**.

9. In the last, learned counsel has urged that direction for expeditious disposal of bail application of the applicant be given.

10. Hence, it is observed that in case applicant surrenders before the court below and applies for bail, the same shall be considered and decided by the Court concerned in terms of the law laid down by the Hon'ble Apex Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825** .

Order Date :- 20.11.2023
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Digitally signed by :-
MAHBOOB SAFI
High Court of Judicature at Allahabad