

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9842 of 2023

Applicant :- Pankaj Soni

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

Counsel for Applicant :- Sanyukta Singh, Akshat Sinha

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised. Rejoinder affidavit filed today by the learned counsel for the applicant is taken on record.
2. Heard Sri Akshat Sinha, learned counsel for the applicant and Sri Ashutosh Srivastava, learned A.G.A. for the State and also perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 0160 of 2022, under Sections 376 & 506 of IPC, Police Station Karchhana, District Prayagraj, with a prayer to enlarge him on anticipatory bail.
4. As per prosecution story, the applicant is stated to be the neighbor of the victim and both were well acquainted with each other since Class-VI. Subsequent to it, both had come at Prayagraj for further studies. The applicant is stated to have entered into corporeal relationship on the basis of secret marriage entered into between them. Subsequently, the applicant is stated to have refused to admit the said secret marriage and had left the informant/victim on her own.
5. Learned counsel for the applicant has stated that the applicant was granted interim protection vide order dated 12.09.2023 of this Court and has not misused it. The final report (charge-sheet) has been filed in the matter. The applicant was earlier on granted interim protection till the submission of report u/s 173(2) Cr.P.C. vide order dated 30.09.2022 passed in Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No.9303 of 2022 and he had not misused it.
6. Learned counsel for the applicant has placed much reliance on

the judgments of Apex Court passed in case of **Pramod Suryabhan Pawar vs. State of Maharashtra and Another** reported in **2019 (9) SCC 608** and **Ansaar Mohammad vs. State of Rajasthan and Another**, reported in **2022 SCC OnLine SC 886**, wherein it has been stated that entering into any kind of corporeal relationship with a person on the pretext of getting marriage cannot be termed as rape. Learned counsel has also stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has apprehension of his arrest. He has nothing to do with the said offence as alleged by the prosecution. In support of his submission, learned counsel has also placed reliance upon the judgement of the Apex Court in *Aman Preet Singh vs. C.B.I. through Director* AIR 2021 SC 4154, wherein the Court has clearly held that if a person, who is an accused in a non-bailable/cognizable offence, was not taken into custody during the period of investigation, in such a case, it is appropriate that he may be released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. It is further submitted that the applicant has no criminal history. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned A.G.A. has vehemently opposed the prayer for grant of anticipatory bail but unable to dispute the submissions raised by the learned counsel for the applicant and also the fact that the applicant has no criminal history.

8. Considering the arguments advanced by the learned counsel for the parties and in view of the law laid down by the Apex Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**", the applicant is entitled to be granted anticipatory bail in this case.

9. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is **allowed**.

10. In the event of arrest of the applicant, **Pankaj Soni** involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

i. that the applicant shall make himself available for interrogation

by a police officer as and when required;

ii. that 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;

iii. that the applicant shall not leave India without previous permission of the court;

iv. that the applicant shall not tamper with the evidence during the trial;

v. that the applicant shall not pressurize/ intimidate the prosecution witness;

vi. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

11. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

12. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 8.12.2023

Siddhant