

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9978 of 2023

Applicant :- Rajababu

Opposite Party :- State of U.P.

Counsel for Applicant :- Devi Dayal

Counsel for Opposite Party :- G.A., Shailendra Singh

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.
2. This application for anticipatory bail has been filed by applicant- **Rajababu** in connection with Case Crime No.206 of 2021, under Sections 147, 148, 149, 307, 323, 504, 506, 354 Kha, 325 IPC, Police Station -Saiyan, District Agra.
3. The prosecutrix was physically molested and attempt of rape was made by named accused Banti and Narayan Singh and she was also assaulted with lathi, danda and pharsa by some other co-accused persons including the present accused applicant. The informant and her family members sustained grievous injuries in the incident. F.I.R. was lodged on 27.12.2021 and investigation started and now the charge-sheet has been submitted in the matter under Sections 147, 148, 149, 307, 323, 504, 506, 325 IPC,
4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Charge sheet in the matter has been submitted. It is further submitted that no specific role has been assigned to the applicant in the alleged incident. No sexual offence against the informant, who is a lady, has been committed by the applicant and even in her statement under section 164 Cr.P.C., the prosecutrix assigned no role at all to the present applicant in the alleged incident and specific name of co-accused Banti and Narayan Singh has been taken by her. It is further submitted that the co-accused Pal Singh, having identical role, has been granted anticipatory bail by coordinate Bench of this Court vide order dated 2.8.2023 passed in CrI. Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. -

8620 of 2023 . It is further submitted that during the course of investigation, the applicant has been cooperative with the investigation and now after filing of the charge-sheet, he has not been declared proclaimed offender. It is further submitted that no custodial interrogation is required in this matter of the applicant and he is entitled for bail. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. has opposed the prayer for anticipatory bail.

6. It reveals from the perusal of the record that no process under Section 82/83 Cr.P.C. has been issued against the applicant till date and he has cooperated during the investigation.

7. 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 law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

8. 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.

9. 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 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 conclusion of trial in the matter.

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

12. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail 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 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 applicant shall not pressurize/ intimidate the prosecution witness.
- iii. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- iv. The applicant shall not leave India without prior permission of the Court and if he has passport, the same shall be deposited by her 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 applicant in accordance with law.

Order Date :- 18.10.2023

Fhd