

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 10213 of 2023

Applicant :- Nempal

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

Counsel for Applicant :- Abhilasha Singh,Rahul Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. As informed by learned AGA, notice to the informant has been served on 12.09.2023 but none is present on behalf of the informant even in the revised call.

2. Heard Ms. Abhilasha Singh, learned counsel for the applicant and Sri Varun Pratap Singh, 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. 503 of 2015, under Sections 363, 366, 368, 376 of IPC and Sections 17/6 of Protection of Children from Sexual Offences Act, Police Station Nawabganj, District Bareilly, with a prayer to enlarge him on anticipatory bail.

4. As per prosecution story, the daughter of the informant was found missing from her house by the informant in the night of 25/26.09.2015.

5. Learned counsel for the applicant has 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. Learned counsel has further stated that the FIR is delayed by five days and there is no explanation of the said delay caused. Learned counsel has placed much reliance on the ossification test report which indicates her age to be 20 years on 21.04.2017, as such, she was major on the date of occurrence and a leverage of two years may be granted to the applicant on the upper side. Learned counsel has placed much reliance upon the judgement of Apex Court passed in Jaya Mala Vs. State of J & K, (1982) 2 SCC 538 and Mohd. Imran Khan vs. State (Govt. of NCT of Delhi), (2011) 10 SCC 192, whereby it has been opined that the radiologist cannot be predict the correct date of birth rather there is a long margin of 1 to 2 years on either side.

6. Learned counsel for the applicant has also placed reliance on the marriage certificate of the applicant and the victim issued by the Registrar, Moradabad on 06.10.2015 whereby it is stated that marriage was solemnized on 07.07.2015 much before the alleged date of occurrence. The FIR *per se* stands falsified by the said marriage certificate. Learned counsel has also placed much reliance upon the statement of the victim recorded u/s 164 Cr.P.C. on 24.09.2017 wherein she has stated that she had gone with the applicant out of her own sweet will and has married him, she had also given birth to a baby

girl out of the said wedlock. The applicant had no knowledge of having the FIR being lodged against him as the said FIR has been instituted out of vengeance. 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, **Nempal** 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 :- 1.11.2023
Siddhant