

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11601 of 2023

Applicant :- Yusuf @ Yusuf Khan

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

Counsel for Applicant :- Krishna Shankar

Counsel for Opposite Party :- G.A.,Saurabh Pathak

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant **Yusuf @ Yusuf Khan** seeking anticipatory bail in Case Crime No. 531 of 2023, under Sections 376, 323, 504, 506 IPC and Section 3/4 POCSO Act, Police Station Auraiya, District Auraiya.
3. The accused applicant, who was a family friend of the maternal uncle of prosecutrix sexually exploited her and she was even raped by the present applicant and some obscene photographs and videos were procured and the offence continued for a long period of about six years. However, F.I.R. was lodged on 26.05.2023 and investigation started, which is still going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. 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.
5. It is further submitted that the present applicant has been falsely implicated in this matter because Achhan, the maternal uncle of the victim was having some animosity with the present applicant and he is the master mind of the whole false story and as a matter of fact, the I.O. has collected no obscene videos so far during the investigation. It is further submitted that the medical report does not corroborate the prosecution version and wrong statement has been given by the victim under Sections 161 & 164 Cr.P.C. It is

also submitted that no independent witness has supported the prosecution version and no evidence of sexual assault or rape has been collected by the I.O. during the course of investigation so far. It is also submitted that during a long period of about six years, no complaint was made by the prosecutrix to any of his family members regarding the alleged incident and behaviour of the present applicant. It is also submitted that the applicant has been cooperative with the investigation of the case and the criminal history of the present applicant has been sufficiently explained and as such, he is entitled for anticipatory bail.

6. Learned A.G.A. and learned counsel for the informant have opposed the prayer for anticipatory bail and it has been submitted that in the medical examination of the victim, the doctor has found sufficient evidence regarding sexual assault. It is further submitted that the prosecutrix of this case was a minor girl when the sexual offence against her started and she was not in a position to make complaint against the present applicant. It is also submitted that the sexual offence has been continued and committed by the present applicant for a long period of about six years. It is also submitted that the victim in her statement under Sections 161 & 164 Cr.P.C. has specifically corroborated the prosecution version. It is also submitted that the investigation of the case is still going on. It is also submitted that the offence is very heinous and serious and as such, the applicant is not entitled for anticipatory bail.

7. In this matter, the allegations have been made against the present applicant for committing sexual assault and rape against her, minor prosecutrix. The offence is very heinous and the present applicant is not entitled to grant anticipatory bail.

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

10. The application is **rejected**.

Order Date :- 31.10.2023

Shivangi