

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10566 of 2023

Applicant :- Sanvvar

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

Counsel for Applicant :- Haya Rizvi

Counsel for Opposite Party :- G.A., Sarve Nazir, Zafar Abbas

Hon'ble Nalin Kumar Srivastava, J.

1. Criminal Misc. Exemption Application is allowed.
2. Heard learned counsel for the applicant, learned A.G.A for the State as well as learned counsel for the informant and perused the record.
3. This application has been moved on behalf of the applicant - **Sanvvar** seeking anticipatory bail in Case Crime No.350 of 2018, under Sections 363, 366, 376D IPC and Section 5/6 POCSO Act, Police Station Shahpur, District Muzaffar Nagar.
4. The prosecution story, as unfolded in the F.I.R., is that on 21.7.2018 at about 6 p.m., the main accused Firoz took the minor victim, who happens to be the sister of the informant, in a field and rape was committed upon her and the present applicant was cooperating with the main accused Firoz. F.I.R. was lodged on 22.7.2018 and investigation started and charge-sheet was submitted against co-accused Firoz only, however during course of trial, on the basis of the statement of P.W.1 the informant and P.W.2 the victim, the present applicant was summoned by the Court to face trial under Sections 363, 366, 376D IPC and Section 5/6 POCSO Act invoking the powers given to the Court under section 319 Cr.P.C.
5. It is submitted by the learned counsel for the applicant that the 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. He has been falsely roped in this matter. It is further submitted that there are material contradictions in the contents of the F.I.R. and in the statements of the victim herself made under sections 161 and 164 Cr.P.C. It is also submitted that the medical report does not corroborate the prosecution version. As a matter of fact, no internal or external injury was found on the private part or on the body of the victim. Applicant has

absolutely no role in the commission of the crime. Victim is a major lady and she is not a minor girl. It is also submitted that there are lot of contradictions in the statement of P.W.1 and P.W.2, who have deposed before the trial court and on the basis of whose statements, the applicant has been summoned to face trial. It is further submitted that the applicant has no criminal history to his credit and as such he is entitled for anticipatory bail in this matter.

6. Per contra, learned A.G.A. and learned counsel for the informant vehemently opposed the prayer for anticipatory bail. At the very outset it was pointed out that on the basis of educational certificate, the victim was a minor girl on the date of incident. F.I.R. is not an encyclopedia of the matter and after filing of the F.I.R., during course of investigation, the victim has narrated the active role and participation of the applicant in the commission of the alleged crime in her statement recorded under sections 161 and 164 Cr.P.C. as well. It is further submitted that on the basis of the statement of P.W.1, the informant / the brother of the victim and P.W.2, the victim herself, the trial court has proceeded against the present applicant and has rightly summoned him to face trial under Sections 363, 366, 376D IPC and Section 5/6 POCSO Act. It is further submitted that the offence committed by the applicant is grave and serious. A minor victim has been sexually exploited by the accused applicant, as such he is not entitled for anticipatory bail.

7. Present matter relates to rape committed with a minor girl. Although no charge-sheet was submitted against the present applicant while he was a named accused in the F.I.R., but the Court summoned the applicant to face trial invoking the provisions of section 319 Cr.P.C.

8. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has 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 and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant till the end of trial. The prayer made in the application is refused.

10. The anticipatory bail application is **rejected**.

Order Date :- 31.10.2023

SS