

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10900 of 2023**

Applicant :- Sanjeev Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned AGA and perused the material available on record.
3. This application for anticipatory bail has been filed by applicant- **Sanjeev Kumar** in connection with Case Crime No. 293 of 2021, under sections 376/511 IPC, P.S. Shahganj, District Agra.
4. It is alleged in the F.I.R. that the present accused applicant along with other co-accused persons after making an entrance in the house of the victim tried to outrage her modesty and some theft was also committed. F.I.R. was lodged on 21.07.2021 and charge sheet under Sections 452, 354-A, 120-B, 380, 411 I.P.C. has been submitted against the applicant.
5. 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 the prosecution story is totally baseless and frivolous. It is also submitted that in the F.I.R., there was no allegations for attempt to rape against the present applicant and even in her statement under Sections 161 & 164 Cr.P.C., the prosecutrix has stated nothing regarding attempt to rape being committed by the present applicant to her but on the same evidence, charge sheet was filed by the I.O. under Sections 452, 354-A, 120-B, 380, 411 I.P.C. whereas there was no cogent evidence for the offence of attempt to rape against the present applicant. It is next submitted that after submitting charge sheet, no

processes under Sections 82 & 83 Cr.P.C. have been issued against the present applicant and he has not been declared as proclaimed offender. It is further submitted that charge sheet was submitted by way of filing an Application U/s 482 Cr.P.C. 16186 of 2023 and the same was dismissed by the coordinate Bench of this Court vide order dated 13.07.2023 and no interim protection is effective in favour of the applicant at this stage. It is next submitted that medical examination of the victim was refused by the victim herself. It is next submitted that during investigation, he has been cooperative with the investigation of the case. It is also submitted that after submission of the charge sheet, he is entitled for anticipatory bail. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

6. Learned A.G.A. has opposed the prayer for anticipatory bail. However, he could not dispute the factual submission as made by the learned counsel for the applicant.

7. In the present matter, charge sheet has been submitted in this matter. He has been cooperative during the course of investigation and now no custodial interrogation is required.

8. 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 controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

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.

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.

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 a fit case for anticipatory bail to the applicant till conclusion of trial in the matter.

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

11. 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 they have passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

12. 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 :- 8.11.2023

Shivangi