

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11025 of 2023

Applicant :- Dharmendra Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rahul Kumar Sharma

Counsel for Opposite Party :- G.A., Pramod Kumar Dwivedi

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Supplementary affidavit filed today is taken on record.
3. Heard Sri Rahul Kumar Sharma, learned counsel for the applicant, Sri Pramod Kumar Dwivedi, learned counsel for the informant, Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.
4. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime/F.I.R. No.209 of 2023, under Sections 354, 323, 504, 376 and 34 I.P.C., Police Station Kotwali Sasni, District Hathras, during the pendency of trial.
5. As per prosecution story, on 11.07.2023 at about 1:00 p.m., the applicant alongwith three other co-accused persons, in furtherance of common intention, are stated to have hurled abuses at the informant and her husband. On being asked to refrain from doing so, the applicant and other co-accused persons are stated to have assaulted them causing injuries to them. There are allegations against the applicant of outraging the modesty of the informant.
6. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. The allegations have been inflated in the statement of the victim recorded under Section 164 Cr.P.C., whereby the allegations of aggravated sexual assault have been allayed against the applicant. Learned counsel has further stated that the said statement has been recorded after legal consultation. There is a cross version to the present case as FIR No.208 of 2023 was instituted on behalf of the applicant the same night at 8:30 p.m. regarding the offence dated 11.07.2023 at 1:15 p.m. Learned counsel has further stated that the present FIR is a counterblast to the FIR No.208 of 2023.

7. Learned counsel for the applicant has stated that the criminal history of two cases assigned to the applicant stands explained as in one case, he has been acquitted and he is on bail in the other case. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

8. Per contra, learned counsel for the informant and learned A.G.A. has vehemently opposed the anticipatory bail application on the ground the statement of the victim recorded under Section 164 Cr.P.C. categorically indicates serious allegations against the applicant and there being a cross version, the present case is hit by para- 43 of the judgment of this Court passed in **Shivam vs. State of U.P. and Another, 2021 SCC OnLine All 264**, as such the applicant is not entitled for anticipatory bail. The accused in the cross case is languishing in jail.

9. After hearing learned counsel for the parties and taking into consideration the fact that there is a cross version to the present case and also taking into consideration the seriousness of the allegations, I do not find it a fit case for grant of anticipatory bail to the applicant.

10. The present anticipatory bail application is hereby found devoid of merits and is accordingly **rejected**.

11. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 19.10.2023

Ravi Kant

(Krishan Pahal, J.)