

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11060 of 2023

Applicant :- Ankesh Kumar Srivastava

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

Counsel for Applicant :- Manoj Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Manoj Kumar Mishra, learned counsel for the applicant and Sri V.K.S. Parmar, learned A.G.A. for the State as well as perused the record.
3. Learned A.G.A. has informed that the notice to the informant has been served on 03.10.2023.
4. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.285 of 2023, registered under Sections 363, 366, 376, 427, 506 IPC & 3/4 POCSO Act at Police Station- Cholapur, District Varanasi with a prayer to enlarge him on anticipatory bail.
5. As per prosecution story, some unknown persons are stated to have enticed away the minor grand daughter of the informant on 01.07.2023 at about 1:30 p.m. The FIR was instituted the same night at 10:35 p.m. by the informant
6. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. He has nothing to do with the said offence. The victim is a consenting party as is evident from her statement recorded under Section 164 Cr.P.C., whereby it has been stated that she had entered into corporeal relationship with him although by force. The victim has categorically stated that she had gone all the way to Surat, Gujarat and she has not raised any alarm during the said sojourn. Learned counsel has further stated that as per the school certificate, her date of birth is 02.09.2005, as such she is just two months less than 18 years, the age of majority. The applicant himself is a 19 years old young lad. The present case is a classic example of misuse of the

POCSO Act as both are young persons.

7. 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. There are no criminal antecedents of the applicant. The applicant has apprehension of his arrest. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

8. Learned counsel for the applicant has placed much reliance on the judgment of Apex Court in **Sushil Kumar vs. Rakesh Kumar**, (2003) 8 SCC 673, wherein it has been stated that it is more often in the Indian Society that person shows the age of their wards much below than their actual age. In the case of **Brij Mohan Singh vs. Priya Brat Narain Sinha**, AIR 1965 SC 282, this Court, inter alia, observed that in actual life it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed. It is also settled by Apex Court that as per the medical records, a leverage of two years may be granted to the accused person.

9. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application but unable to dispute the submissions raised by the learned counsel for the applicant.

10. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)**, (2020) 5 SCC 1". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

11. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Ankesh Kumar Srivastava** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(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 the previous permission of the court;

(iv). that in case charge-sheet is submitted 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;

(vii). that in case of breach of any of the above conditions the court concerned shall have the liberty to cancel the bail.

12. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 16.10.2023

Ravi Kant

(Krishan Pahal, J.)