

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11009 of 2023**

Applicant :- Tejendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Mandeep Singh

Counsel for Opposite Party :- G.A.

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 - **Tejendra** seeking anticipatory bail in Case Crime No. 484 of 2023, under Sections 328, 376, 506 IPC and Section 67 Information Technology Act, Police Station- Kotwali Dehat, District- Bulandshahr.
3. The sister of the informant, who had been living separately from her husband for a period about 9 years with the informant was committed rape by the present applicant after administering intoxicant in the cold drink and the said incident continued for about 9 years. Meanwhile her obscene video and photograph were procured by the present applicant along with the other co-accused and the same was shown to the husband of the victim. FIR was lodged on 26.8.2023 and investigation started, which is going on.
4. 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. It is further submitted that the prosecution story is highly improbable as for a period of about 9 years the prosecutrix continued to visit to the shop of the present applicant and she continued to take intoxicated cold drink there despite knowledge that some intoxicant was mixed in it and for a period of over 9 years she never made any complaint of rape to any one. It is further submitted that no obscene video or photo has been recovered by the I.O. of the case and the husband of the victim had himself moved an application to SSP, Bulandshahr on 25.9.2023 that since he had lodged a case against the victim, the sister-in-law (bhabhi)

of the victim had asked her to falsely implicate the present applicant and co-accused on the basis of forged obscene video and photo. It is also submitted that prior to the present FIR an FIR was lodged by the son of the present applicant against the victim and his brother Saurab in Case Crime No. 307 of 2023 under Section 380, 323, 504, 506 I.P.C. and to make a pressure for compromise in the aforesaid FIR, the present FIR was lodged on the basis on false and fabricated facts. It is further submitted that the whole story narrated by the victim in her statement under Section 161 and 164 Cr.P.C is totally false. It is also submitted that no internal examination of the victim of the case was conducted as she refused for the same and as such there is no medical evidence in support of the prosecution story. It is also submitted that investigation of the case is going on and the applicant is cooperating with the same. He is having no criminal history to his credit and 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.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It is vehemently submitted that in her statement under Section 161 and 164 Cr.P.C. the prosecutrix has corroborated the prosecution version and has disclosed specific role of present applicant in the commission of the alleged offence.

6. In this matter the investigation is gong on and for about 9 years the victim of the case never complained of the incident to any person. She is a major lady and the applicant is said to be cooperative with the investigation of the case.

7. 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, llikelihood 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.

8. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional

mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

9. 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 filing of police report under Section 173(2) Cr.P.C. before the competent Court.

10. The application is **allowed** accordingly.

11. In the event of arrest of the applicant, 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 Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

12. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of interim protection granted to the applicant.

Order Date :- 13.10.2023//Fhd