

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11182 of 2022

Applicant :- Anil Kumar

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

Counsel for Applicant :- Purushottam Dixit, Jitendra
Kumar, Keshav Hari Dixit

Counsel for Opposite Party :- G.A., Ramesh Prajapati

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. The present application under Section 438 Cr.P.C. has been filed by the applicant - **Anil Kumar** seeking anticipatory bail in Case Crime No.0082 of 2016, under Sections 363 and 366 IPC and Section 4 POCSO Act, Police Station Pahasu, District Bulandshahar.
3. The prosecution story, as unfolded in the F.I.R., is that the minor daughter of the informant was enticed away by the accused applicant and when she was not traced for many days, F.I.R. was lodged on 16.3.2016 and now charge-sheet has been submitted in the matter.
4. 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. He has been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been filed. It is further submitted that the victim of this case is a major girl and she on her own free will had gone with the applicant. She was never kidnapped by the applicant and in her statement under sections 161 and 164 Cr.P.C., she has not supported the prosecution version. It is also submitted that earlier, an interim protection by way of interim anticipatory bail was granted to the applicant by this Court vide order dated 13.3.2023 and the said liberty was not misused by the applicant. It is further submitted that the medical report does not corroborate the prosecution version. It is also submitted that the applicant has been

cooperative during the course of investigation. He has not been declared proclaimed offender by the trial court. No process under sections 82, 83 Cr.P.C. has been issued against the applicant. It is further submitted that no custodial interrogation is required in this matter from the applicant. Applicant has no criminal antecedents to his credit and as such he is entitled for anticipatory bail.

5. Per contra, learned A.G.A opposed the prayer for anticipatory bail and it has been submitted that the victim of this case is a minor girl. She was enticed away by the applicant. She was not a consenting party and even if she had given consent, consent of a minor has no value in the eye of law. It is further submitted that ample evidence has been collected against the applicant during investigation and charge-sheet has been submitted and as such the applicant is not entitled for anticipatory bail.

6. In the present case, it reflects from the perusal of the record that Writ 'C' No.10206 of 2016 was also preferred by the applicant in this matter wherein a protection was granted to the applicant by this Court vide order dated 3.3.2016, but however subsequently charge-sheet was submitted. Record further reflects that earlier in the Application u/s 482 Cr.P.C. No. - 23973 of 2016 filed by the applicant, the proceedings of the case were kept stayed by this Court vide order dated 11.8.2016, but the trial court following the dictum laid down by the Hon'ble Apex Court in **Asian Resurfacing of Road Agency Pvt. Ltd and another Vs. Central Bureau of Investigation, (2018) 16 SCC 299**, proceeded with the matter vide order dated 4.5.2022 but the applicant has not been declared a proclaimed offender so far and no process u/s 82 / 83 Cr.P.C. has been issued against him. It also appears that in her statement recorded u/s 161 and 164 Cr.P.C., the victim has given a categorical statement that she had left her house out of her own free will and had gone with the applicant, performed marriage with him and is willing to live with the applicant. Although, a medical report is available on record prima facie showing the age of the victim as 19 to 20 years, the prosecution has impressed upon the high school certificate of the victim wherein her date of birth is mentioned as 9.7.1998. The occurrence is said to be happened on 27.2.2016. Hence, as per school certificate, she was a minor girl on the date of incident. To ascertain the age of a prosecutrix, the relevant rules of Juvenile Justice Board are to be kept into consideration wherein a preferential list has been provided to ascertain the age and the high school certificate lies on the top of the preferential list. Since the same is trustworthy, there is no necessity to go through or obtain a medical report in respect of the

age of the victim and hence the prosecution has got a force in its contention that the victim was a minor girl on the date of incident.

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, 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.

8. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, materials collected during the course of investigation 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.

9. The anticipatory bail application is, hereby, **rejected**.

Order Date :- 7.12.2023

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