

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11196 of 2023

Applicant :- Suresh Chandra

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

Counsel for Applicant :- Saurabh Shahi, Anurag Rai

Counsel for Opposite Party :- G.A., Dharm Singh Parmar

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant - **Suresh Chandra** seeking anticipatory bail in Complaint Case No.335 of 2019, under Sections 376, 354, 323 IPC, Police Station Binwar, District Hamirpur.
2. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for the complainant and perused the record.
3. The present applicant was summoned to face trial under sections 376, 354, 323 IPC by the Court of Chief Judicial Magistrate, Hamirpur vide order dated 18.4.2022 and four other accused persons were also summoned under different sections of IPC.
4. It has been argued by the learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. He has been falsely implicated in this matter. It is further submitted that in the present case, two persons are said to have sustained injuries in the incident, but however there is no medical examination report of any injured person on record. It is further submitted that prior to the present complaint, on 24.3.2019 at about 8:00 p.m., the husband of the complainant and his other family members had abused and assaulted the present applicant with intention to kill and when his family members tried to rescue him, they were also assaulted with lathi, danda, etc., who sustained serious injuries and F.I.R. bearing Case Crime No.54 of 2019 was lodged from the accused side and after investigation, now charge-sheet has been submitted in that matter and they are facing prosecution in the said case. It is further submitted that the present

complaint is a counter blast of the aforesaid criminal case filed on behalf of the accused side. It is further submitted that there is no independent witness of the incident and all the witnesses are the pocket persons of the complainant. It is further submitted that it is a case of malicious prosecution and the applicant is having no criminal history. It is further submitted that the complaint has been filed about 18 days after the incident without any plausible explanation of inordinate delay. It is further submitted that no actual sexual intercourse has taken place in this matter. Applicant is ready and willing to cooperate with the trial court and as such he is entitled for anticipatory bail.

5. Per contra, learned A.G.A. as well as learned counsel for the complainant opposed the prayer for anticipatory bail and it has been submitted that the prosecutrix / complainant and the witnesses have corroborated the prosecution story in their statement recorded under sections 200 and 202 Cr.P.C. respectively and the offence is very daring and serious. It is further submitted that an Application u/s 482 Cr.P.C. No. - 18269 of 2022 was moved by the applicant along with other co-accused persons wherein on the request of the applicants, they were directed by this Court vide order dated 21.9.2022 that they have to surrender before the court concerned and their bail application shall be heard and disposed of in the light of dictum laid down by the Hon'ble Supreme Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825**. Since the said order was passed on the request of the applicant himself, he was bound to comply with the order of this Court. Keeping in view the seriousness of the offence, the applicant is not entitled for anticipatory bail.

6. It is a case of sexual offence committed against a married lady. A direction has already been issued by this Court in Application u/s 482 Cr.P.C. No. - 18269 of 2022 on 21.9.2022 aforesaid to appear before the court concerned and the trial court was also directed to dispose of the bail application of the applicant in the light of Satender Kumar Antil (supra) case, but the said order was not complied with by the applicant, who left it in futile.

7. 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.

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 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. The prayer made in the application is refused.

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

10. In the last, learned counsel for the applicant has urged that direction for expeditious disposal of the bail application of the applicant be given in the light of the decision of the Hon'ble Apex Court in Satender Kumar Antil (supra) case.

11. However, it is observed that the bail application of the applicant, if moved, shall be considered and decided by the Court concerned in terms of the law laid down by the Hon'ble Apex Court in Satender Kumar Antil case (supra).

It is further directed that the learned court concerned, while considering the bail application of the applicant in the light of Satender Kumar Antil case (supra), shall pass an order strictly in compliance of the directions given in the aforesaid judgment by the Hon'ble Supreme Court, in letter and spirit, particularly complying with the order dated 21.3.2023 of the Hon'ble Apex Court in the aforesaid matter.

Order Date :- 31.10.2023

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