

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11306 of 2023

Applicant :- Deepak @ Avinash

Opposite Party :- State of U.P.

Counsel for Applicant :- Shri Prakash Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant **Deepak @ Avinash** seeking anticipatory bail in Case Crime No. 52 of 2023, under Sections 376-D, 506 IPC, Police Station Nichlaul, District Maharajganj.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It has been submitted 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. It is further submitted that no specific role has been assigned to the present applicant in the F.I.R. and as a matter of fact the lady victim had some intimate relations with the co-accused Rajni, who had committed the alleged offence and the applicant has been implicated in this case only for being the friend of co-accused Rajni. It is further submitted that the independent witnesses of the case have not supported the prosecution version. The present applicant is minor. It is also submitted that the main accused Rajni has been granted regular bail by this Court on 17.7.2023 by the Coordinate Bench of this Court vide Criminal Misc. Bail Application No. 31133 of 2023. The investigation of the case is going on and the applicant is cooperating with the same. It has been submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that it is a case of gang rape and specific allegation for committing rape with the poor prosecutrix has been levelled against the present applicant as well alongwith co-accused. In her statement recorded under Sections 161 and 164 CrPC the

prosecutrix has supported the prosecution version. Offence is very serious.

5. In this matter, from the perusal of the record it reveals that co-accused Rajni procured some objectionable video of the lady victim and by way of threatening to make the video viral, he committed rape with the victim of this case and the present applicant, who happens to be the friend of main accused Rajni, also committed rape with the prosecutrix repeatedly on many occasions. F.I.R. was lodged on 31.1.2023 and investigation started, which is still going on. It is a case of gang rape and ample evidence has been collected against the present applicant in the investigation so far. The prosecutrix has stated specific role of the present applicant in her statements recorded under Sections 161 and 164 CrPC.

6. 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.

7. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

8. The application is **rejected**.

9. However, it is observed that the bail application of the applicant, if moved, shall be considered and decided by the Court concerned in accordance with the settled law.

Order Date :- 11.12.2023

safi