Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11398 of 2023

Applicant :- Ramdulare
Opposite Party :- State of U.P.
Counsel for Applicant :- Vidya Kant Tripathi
Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Vidya Kant Tripathi, learned counsel for the applicant and Sri Shakil Ahmad, learned A.G.A. for the State and also perused the record.

3. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 166 of 2023, under Sections 376-D, 313, 504, 506, 342 of IPC, Police Station Adalhat, District Mirzapur, with a prayer to enlarge him on anticipatory bail.

4. As per prosecution story, the applicant is stated to have entered into corporeal relationship with the victim on the pretext that he shall marry her, as such, he is stated to have impregnated her. The foetus was aborted at the behest of the applicant by administering some medicines to her. Subsequent to it on 25.01.2023, the applicant along with other named co-accused persons and one unknown person are stated to have come to the house of the victim at 12 noon and they are stated to have committed gang rape with her besides threatening her.

5. Learned counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has apprehension of his arrest. He has nothing to do with the said offence as alleged by the prosecution. Learned counsel has further stated that the FIR has been instituted by moving an application u/s 156(3) Cr.P.C. which itself is delayed by about two years. A new cause of action dated 25.01.2023 was created just to cover up the delay in lodging the FIR. No injury has been found on the body part of the victim who happens to be major at the time of her examination. Learned counsel has also stated that the police was asked to furnish a report on the application u/s 156(3) Cr.P.C. whereby it has stated that no offence was found to have been committed, as such, the applicant is entitled for anticipatory.

6. 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. It is further submitted that the applicant has no criminal history. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned A.G.A. has vehemently opposed the prayer for grant of anticipatory bail but unable to dispute the submissions raised by the learned counsel for the applicant and also the fact that the applicant has no criminal history.

8. Considering the arguments advanced by the learned counsel for the parties and in view of the law laid down by the Apex Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**", the applicant is entitled to be granted anticipatory bail in this case.

9. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is **allowed**.

10. In the event of arrest of the applicant, **Ramdulare** involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

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 previous permission of the court;
iv. that 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;

11. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

12. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 16.10.2023
Siddhant

Digitally signed by :-
SIDDHANT SAHU
High Court of Judicature at Allahabad