

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11565 of 2023

Applicant :- Santosh Kumar And Another

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

Counsel for Applicant :- Sunil Kumar, Lakshman Singh

Counsel for Opposite Party :- G.A., Manisha Chaturvedi, Salman Ahmad

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the material available on record.
2. This application for anticipatory bail has been filed by the applicants - **Santosh Kumar** and **Brijesh Kumar** in connection with Case Crime No.70 of 2023, under Sections 376 (2) (i), 313, 344 IPC and Sections 5J (ii), 5 (L), 6 & 4 (2) POCSO Act, Police Station Kadaura, District Jalaun.
3. The prosecution story, as culled out in the F.I.R., is that Smt. Geeta, the mother of the informant was enticed away by Gram Pradhan Mool Chandra, but for the sake of social status, he settled the marriage of the informant with his younger son Santosh Kumar and started living in the house of the informant and in the meanwhile the said Santosh Kumar obtained a sale deed from Geeta Devi without any consideration and a sale deed for some land was also executed in favour of the informant, who was minor at that time. Santosh Kumar was having forcible physical relations with the informant without marrying her and again for the sake of social status, the marriage of the informant was settled with Brijesh Kumar, the elder son of Mool Chandra and the mother of the informant executed a sale deed of her remaining land in favour of Brijesh Kumar. The said Brijesh Kumar also did not marry with the informant, but physically exploited her. After the death of Mool Chandra, some illicit relations took place between the mother of the informant and Brijesh Kumar and the informant was forced to make illegal physical relation with one Shyam Kumar, who also physically exploited her and subsequently in 2021 the marriage of the informant was performed with Brijesh Kumar in the Government Community Marriage Scheme, but the said Brijesh Kumar grabbed Rs.2 lakh from the bank account of the

informant and kept the informant with him. F.I.R. was lodged on 2.4.2023 and now charge-sheet has been submitted in the matter.

4. It is submitted by the learned counsel for the applicants that the applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against them. They have 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 and cognizance has been taken into the matter. It is further submitted that the applicants have committed no offence. The illicit relations took place between the mother of the informant and father of the present applicants and they had no relations with the mother of the informant. It is further submitted that a twisted story has been made by the informant in her statements recorded u/s 161 and 164 Cr.P.C. It is further submitted that it was the mother of the informant, who had illicit relations with Mool Chandra and his son i.e. applicant no.2 as well, but no physical relations took place between the present applicants and the informant. It is further submitted that it is the prosecution case that applicant no.2 is the husband of the informant and the marriage took place on 31.7.2021. It is further submitted that earlier a CrI. Misc. Writ Petition No.6184 of 2023 was moved by the present applicants wherein protection was granted to them till submission of police report u/s 173 (2) Cr.P.C. vide order dated 21.4.2023, but the said protection was not granted to other co-accused Shyam Kumar, who maintained forcible sexual relations with the minor victim as per the contents of the F.I.R. It is further submitted that the said Shyam Kumar, the co-accused of this matter, has been granted anticipatory bail by this Court in CrI. Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. - 5935 of 2023 vide order dated 9.8.2023 till conclusion of trial. It is further submitted that there is no medical report of the informant on record as she refused to be medically examined. It is also submitted that main dispute lies for the property of Smt. Geeta Devi in respect of which some other accused persons have committed dacoity in her house, who wanted to usurp her property which she had inherited by her father-in-law and an F.I.R. as case crime no.93 of 2013 was also lodged by Smt. Geeta Devi against some accused persons and another F.I.R. against the aforesaid accused persons was also filed by Smt. Geeta Devi on 16.7.2014 as case crime no.345 of 2014 under sections 452, 323, 504, 506 IPC wherein charge-sheet has already been submitted. It is also submitted that applicant no.2 Brijesh Kumar, who happens to be the husband of the informant, had already purchased a landed property in favour of his wife, the

informant of the present case, and he is a well wisher of her own wife. It is also submitted that on account of some family dispute, application u/s 125 Cr.P.C. has been moved by the informant against applicant no.2, which goes to show that for the informant of the case, the applicant no.2 is her husband. In the entire facts and circumstances of the case, the applicants, after submission of charge-sheet, are entitled for anticipatory bail.

5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been argued that sexual assault has been made upon the minor victim of the case and she has been physically exploited for so many years.

6. Charge-sheet has been submitted into the matter. No custodial interrogation appears to be required in the matter.

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 law on the subject finally by holding that 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 applicants 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 applicants till end of the trial in the matter.

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

10. In the event of arrest of the applicants in the aforesaid case crime, they shall be released on anticipatory bail till end of the trial on their furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The applicants shall make themselves available before the court concerned on the date fixed in the matter;

(ii) The applicants 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 officer;

(iii) The applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

11. In case of default of any of the conditions, same may be a ground for cancellation of protection granted to the applicants.

Order Date :- 6.11.2023

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