

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11746 of 2023

Applicant :- Neeraj

Opposite Party :- State of U.P.

Counsel for Applicant :- Ruchi Mishra, Rajesh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.
2. This application for anticipatory bail has been filed by applicant- **Neeraj** in connection with Case Crime No. 1511 of 2019, under section 376 IPC, P.S. Baradari, District Bareilly .
3. It is alleged in the F.I.R. that the victim was a widow lady and she was physically exploited on the false pretext of marriage by her cousin brother-in-law, the present applicant and the relationship continued for sometime but subsequently, the applicant performed his marriage with some other lady. F.I.R. was lodged on 15.12.2019 and after investigation, now charge sheet has been submitted in this matter.
4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Charge sheet in the matter has been submitted. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.
5. It is further submitted that it is a case on consensual relationship. It is further submitted that the victim of this case is a major lady and the accused applicant never made any promise to marry with her. It is also submitted that as per statement of prosecutrix under Section 164 Cr.P.C., it has been clearly mentioned that the relationship between the two continued for a period of four years. It is next submitted that since the accused applicant was a bachelor boy, he had no intention to marry with the widow prosecutrix. It is further submitted that after lodging of the F.I.R. in this matter, a Criminal Misc. Writ Petition No.3045 of 2020 was preferred by the present applicant wherein protection order was granted in favour of the

present applicant by this Court vide order dated 25.02.2020 till submission of police report under Section 173(2) Cr.P.C. and the said liberty was never misused by the present applicant. It is further submitted that after submission of the charge sheet in the year 2020, an Application U/s 482 Cr.P.C. No.3830 of 2021 was preferred by the present applicant wherein he was not granted any relief but was directed to appear and surrender before the court concerned and apply for bail vide order dated 07.09.2021. It is further submitted that the said order was challenged before the Hon'ble the Apex Court in Special Leave Petition No.42702 of 2022 and the Hon'ble Apex Court dismissed the SLP as withdrawn with liberty to file such type of cases as remedy available in law. It is next submitted that in the light of the order of Hon'ble Apex Court, anticipatory bail before the Sessions court was rejected and now it is filed before this Court. It is also submitted that after submission of charge sheet, accused applicant has not been declared as proclaimed offender and no processes under Sections 82 & 83 Cr.P.C. have been issued against him and in this regard, the copies of the order sheet has been filed along with supplementary affidavit. It is further submitted that in view of that and also in view of the law laid down by Hon'ble Apex Court, in such type of matters, the present applicant is entitled for anticipatory bail.

6. Learned A.G.A. has opposed the prayer for anticipatory bail and it has been vehemently submitted that taking advantage of the poor conditions of the widow/victim on the false pretext of marriage, the accused applicant physically exploited her and committed rape with her and as such, he is not entitled for anticipatory bail.

7. Admittedly, the relationship between the parties are purely consensual and that is why, prima faice, crucial ingredients of offence of rape are not founded. Reliance has been placed upon the cases of ***Shambhu Karwar Vs. State of U.P. and another, AIR 2022 Supreme Court 3901, Pramod Suryabhan Pawar Vs. State of Maharashtra and another, 2019 9 SCC 608 & Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and another, (2021) 0 Supreme (SC) 182***, wherein the matter was related to consensual relationship between two major persons of opposite sex and benefit was given to the main accused and another law laid down in the case of ***Ansaar Mohammad Vs. State of Rajasthan and another 2022 SCC Online SC 886*** wherein almost in similar matter, anticipatory bail was granted to the accused applicant by the Hon'ble Apex Court.

8. 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.

9. 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 a fit case for anticipatory bail to the applicant till conclusion of trial in the matter.

10. The anticipatory bail application is allowed.

11. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail on his 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 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.

(ii) The applicant shall not pressurize/ intimidate the prosecution witness.

(iii) The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(iv) The applicant shall not leave India without prior permission of the Court and if they have passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

12. In case of breach of any of the above conditions, the

Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicant in accordance with law.

Order Date :- 17.11.2023

Shivangi