

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11588 of 2023

Applicant :- Krishna Kumar Lawaniya

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

Counsel for Applicant :- Sunil Kumar Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

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

2. Apprehending his arrest in Case No.665 of 2008 arising out of Case Crime No.240 of 2008, under Sections 363, 366 IPC, Police Station Shahganj, District Agra, the applicant - **Krishna Kumar Lawaniya** has filed this anticipatory bail application seeking anticipatory bail in the aforesaid crime number.

3. It is alleged in the F.I.R. that the victim of this case, who was a minor girl, was enticed away by the accused applicant.

4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. He has not committed the present offence. He has no concern with the present matter. Alleged offences are not made out against the applicant. It is further submitted that the victim of this case was major on the date of occurrence. The applicant has performed marriage with her on 18.1.2008 in Arya Samaj Mandir and a certificate thereof has been annexed with the affidavit. It is further submitted that the date of birth of the prosecutrix, as per high school marks-sheet is 11.11.1985 and date of incident is 18.4.2008. It is further submitted that out of the wedlock of the applicant and the prosecutrix a son has also born on 18.7.2009. It is further submitted that charge-sheet in this matter has been submitted, but an application u/s 482 Cr.P.C. No.6616 of 2004 was moved wherein it was directed by this Court vide order dated 27.3.2009 that in case the victim moves application through counsel for recording the statement u/s 164 Cr.P.C., it shall be recorded by the Chief Judicial Magistrate concerned and the date was fixed as 12.5.2009 and it was ordered that till then no coercive steps shall be taken against the applicant.

5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail.

6. From the perusal of the record it appears that the victim of the case never appeared before the Chief Judicial Magistrate concerned nor moved any application

for recording her statement u/s 164 Cr.P.C., which was a gross violation of the order of this Court dated 12.5.2009 passed in Application u/s 482 Cr.P.C. No. - 6616 of 2004. The charge-sheet in this matter has already been submitted on 24.7.2008, but the Court proceeded with the matter by order dated 23.9.2022 holding therein that there is no stay order passed by this Court in favour of the applicant and at present non-bailable warrant has been issued against him. Charge-sheet in this matter has been submitted on 24.7.2008 and notably the victim has not been shown in the list of witnesses as a witness of the case and reason thereof appears that since she was not made available by the I.O. for recording her statement u/s 161 Cr.P.C. nor any application was made by the victim before the Chief Judicial Magistrate for recording her statement u/s 164 Cr.P.C., she was not made a witness in the present case. It also appears that during investigation, the prosecutrix of this case has been found minor and that is why charge-sheet has been submitted under Sections 363, 366 IPC. Even if any consent has been given by the victim of the case to go or to live with the accused applicant, it is of no legal value, as she is a minor girl. The offence is very serious and bail should be denied to the present accused applicant.

7. 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.

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 till the end of trial. The prayer made in the application is refused.

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

Order Date :- 19.10.2023

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