

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11634 of 2023

Applicant :- Shahid Husain

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

Counsel for Applicant :- Rakesh Kumar Srivastava

Counsel for Opposite Party :- G.A., Ravindra Prakash Srivastava

Hon'ble Krishan Pahal, J.

1. List has been revised. Heard Sri Rakesh Kumar Srivastava, learned counsel for the applicant and Sri Pradeep Kumar Tiwari, learned Advocate holding brief for Sri Ravindra Prakash Srivastava, learned counsel for the informant as well as Sri S.P. Pandey, learned A.G.A. for the State and also perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 220 of 2023, under Sections 419, 420, 467, 468, 471 IPC, Police Station Sonha, District Basti, with a prayer to enlarge him on anticipatory bail.

3. As per prosecution story, the applicant, who was the political rival of the informant, had got instituted an FIR No. 63 of 2023 u/s 376-D, 506 IPC, 5/6 POCSO Act and 67 IT Act at P.S. Sonha, District Basti through co-accused person Abdul Samad regarding the gang rape having been committed to his daughter. The applicant in collusion with the co-accused person Abdul Samad and Irshad Ahmad is stated to have fudged the date of birth of the victim from 1.1.2006 to 1.1.2009, thus making the matter fall within the purview of POCSO Act, as such, the brother of the informant, Prince Jaiswal, was in jail.

4. Learned counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has the apprehension of his arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. Learned counsel has next stated that in the said matter, the applicant is not a witness. It is further stated that after thorough investigation, the final report (charge sheet) has been submitted against the named co-accused person on 9.5.2023 and the cognizance was taken by the Special Judge on 10.5.2023 itself. It is further stated that subsequent to the said taking of cognizance on

the said charge sheet, the present application u/s 156(3) Cr.P.C. has been moved on 30.6.2023 by the informant. It is also stated that the applicant has simply been made an accused by the informant on the basis of political vengeance. The case of the applicant is at a better footing than the co-accused persons Abdul Samad, who happens to be the father of the victim. The case of the co-accused person Abdul Samad stands distinguished.

5. 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 antecedents. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

6. On the other hand, learned A.G.A. and learned counsel for the informant have vehemently opposed the prayer for grant of anticipatory bail on the ground that the Principal of the institution, Irshad Ahmad, has categorically stated that he had changed the date of birth when the father of the victim had produced the Aadhar card indicating her date of birth to be 1.1.2009, otherwise her date of birth was mentioned in the register as 1.1.2006.

7. On due consideration to the arguments advanced by the learned counsel for the parties and taking into consideration that the case of the applicant is at a different footing to the main accused person Abdul Samad, 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.

8. 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**.

9. In the event of arrest of the applicant, **Shahid Husain** 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;

10. 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.

11. 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 :- 7.11.2023

Shalini