

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 11818 of 2023

Applicant :- Sanjay Sharma

Opposite Party :- State Of U.P. . And Another

Counsel for Applicant :- Suchita Mehrotra, Kartikeya Saran

Counsel for Opposite Party :- G.A., Raj Kumar Gautam

Hon'ble Krishan Pahal, J.

1. Heard Sri Kartikeya Saran and Ms. Suchita Mehrotra, learned counsel for the applicant and Sri Raj Kumar Gautam, 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 Criminal Case No. 923 of 2023, arising out of F.I.R./Case Crime No. 456 of 2022, under Sections 376, 506 IPC, Police Station Hathras Kotwali, District Hathras, with a prayer to enlarge him on anticipatory bail.

PROSECUTION STORY:

3. As per the prosecution story, the FIR was instituted by the informant Parul Vats against the applicant stating that her marriage was solemnized with Praveen Kumar Vats as per Hindu Rites on 20.01.2012. The applicant, who happens to be the brother-in-law (Jeth) of the informant, kept an evil eye on her and wanted to establish illicit relationship with her. The informant is stated to have informed the said indecent behaviour of the applicant to her mother-in-law and husband Praveen, who are stated to have scolded her instead. In the meantime, the father of the informant expired due to Covid-19 complications, as such, the indecent behaviour of the applicant increased and he raped her and threatened her to cause the death of her children if she revealed the said matter to anybody. So, she kept mum and did not reveal the matter to anybody. On 16.03.2022, the in-laws of the informant left her at her maternal home at Hathras.

4. On 24.11.2022 at about 07:00 PM, the applicant barged into the said maternal home of the informant at Hathras and finding her alone, committed rape with her and threatened to kill her children. She did not raise any alarm due to the said threat. The applicant is stated to have informed the informant that they had married her husband Praveen

elsewhere and she shall be kept in a separate house at Delhi by him. She informed the said matter to her sister Shweta and mother Manju on 30.11.2022, as such, the application was moved at the police station on 01.12.2022 which was registered as FIR No.456 of 2022.

CONTENTIONS ON BEHALF OF THE APPLICANT:

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 the apprehension of his arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. There is no medical evidence to corroborate the prosecution story. The husband and wife filed a joint petition for dissolution of marriage u/s 13-B(1) of The Hindu Marriage Act, 1955, and the affidavit was sworn on 17.11.2021. The first motion of the same was moved on 13.01.2022. The matter was sent for counselling vide order dated 29.4.2022 of the Principal Judge, Family Court, Patiala House Court, New Delhi. It was informed that the parties could not settle the matter.

6. Learned counsel has next stated that no injury was found on the body of the victim. A petition u/s 125 Cr.P.C. has been filed against the applicant before the Principal Judge, Family Court, Patiala House Court, New Delhi. Learned counsel has further stated that the brother of the applicant, who happens to be the husband of the informant had filed an application before the Superintendent of Police, Hathras, Uttar Pradesh on 12.09.2022 alleging the apprehension of false and frivolous FIRs by the informant against him and his family members. Learned counsel has placed reliance on several whatsapp chats between the victim and her husband on 24.11.2022, thus, the occurrence of 24.11.2022 stands falsified. Had it been so, the same would have been mentioned in the whatsapp chats itself.

7. Learned counsel has further stated that the FIR is delayed as the occurrence is stated to be of 24.11.2022 and the other occurrence is of the year 2021. The said allegations are *per se* false and cannot be substantiated by any evidence whatsoever. Learned counsel has also stated that Rs. 50 lakhs have been paid by the brother of the applicant towards the memo of understanding/ agreement between the two. The victim has inflated the demand to crores, as such, she has instituted the present FIR to coerce the applicant and his brother into compromise and extract money from them. On the date of occurrence, the applicant was present at his house at Delhi, as he has transferred an amount of Rs.1,49,782.50/- to the account of one P.N. Melhotra at 06:06 PM and had

filed income tax return of one of his clients at 08:49 PM. Thus, the strong alibi of the applicant further falsifies the prosecution story.

8. Learned counsel has further stated that the allegations dated 24.11.2022 coupled with information to her mother and sister on 30.11.2022 have been cooked up just to cover up the delay on legal consultation. The present case is clear misuse of process of law.

9. Learned counsel has further stated that the final report (charge-sheet) has been submitted in the present case and the summons have been issued against the applicant on 21.06.2023. The applicant has no criminal history. There is no likelihood of him absconding or tampering with the evidence. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

CONTENTIONS ON BEHALF OF THE INFORMANT:

10. Learned counsel for the informant and learned AGA have vehemently opposed the anticipatory bail but could not dispute the fact that the applicant has no criminal history.

11. Learned counsel for the informant has opposed the anticipatory bail on the ground that applicant is brother-in-law (jeth) of the informant and has put the said pious relationship to tatters. He is not entitled for anticipatory bail, as he has come all the way from Delhi to Hathras and committed this heinous offence.

CONCLUSION:

12. On due consideration to the arguments advanced by the learned counsel for the parties, the delay in lodging of the FIR coupled with the alibi of the applicant, 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.

13. 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**.

14. In the event of arrest of the applicant, **Sanjay Sharma** 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;

15. 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.

16. 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 :- 28.10.2023

Shalini