

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 12105 of 2023

Applicant :- Surendra Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant - **Surendra Kumar** seeking anticipatory bail in Case Crime No.365 of 2022, under Sections 363, 366 IPC, Police Station Manjhanpur, District Kaushambi.

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

3. The minor victim was kidnapped by the named accused Neeraj Sonkar and when she was not traced, F.I.R. was lodged on 20.7.2022 and investigation started, which is going on.

4. It is submitted by the learned counsel for the applicant that the applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. He has been falsely roped in this matter. It is further submitted that the applicant is not named in the F.I.R. During investigation, in the statement of the informant himself given to the I.O. under section 161 Cr.P.C., the name of the present applicant came into light. It is further submitted that the victim of this case along with the main accused Neeraj Sonkar had preferred habeas corpus writ petition no.831 of 2022, which is still pending before this Court. It is also submitted that no specific role of the present applicant has come into light during the investigation. It is further submitted that although a process u/s 82 Cr.P.C. has been issued against the applicant, but after the rejection of the anticipatory bail application without any delay, present application was moved before this Court. It is also submitted that the applicant is a labourer and works at Surat and that was the reason for delayed filing of anticipatory bail application before this Court.

5. Per contra, learned A.G.A. vehemently opposed the prayer for anticipatory bail and submitted that the victim of this case is still untraced. It is further submitted that in the statement of the informant, an active role in commission of the alleged crime on the part of the applicant has been assigned. Prior to the present occurrence, the present applicant had induced the same minor victim and kept her in his sister's house for two days. It is also submitted that since the victim has not been traced so far, the applicant is not entitled for anticipatory

bail. It is further submitted that after rejection of anticipatory bail by the Sessions Court on 22.9.2023, the present application has been filed belatedly before this Court on 30.10.2023 and in the meanwhile, on 11.10.2023, process u/s 82 Cr.P.C. was issued against the applicant. Since he is a proclaimed offender of this case also, he is not entitled for anticipatory bail.

6. In this matter, investigation is going on. The victim of the case is not traced.

7. The Hon'ble Apex Court in **Lavesh Vs. State (NCT of Delhi)(2012) 8 SCC 730** has held that "Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

8. Further, the judgment passed in **Lavesh** (supra) was referred by the Hon'ble Apex Court in **State of Madhya Pradesh vs. Pradeep Sharma, (2014) 2 Supreme Court Cases 171** and referring to paragraph 12 of the judgment of **Lavesh** (supra), in paragraph 16 of the said judgment, it was observed, relevant portion of which is as under :

"16.....It is clear from the above decision that if anyone is declared as an absconder / proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

9. Hence, from the aforesaid case laws it is evident that as per normal rule, anticipatory bail cannot be granted to an accused who is absconding or concealing himself in order to avoid execution of the process of the Court and has been declared as proclaimed offender.

10. In view of that, I deem it not a fit case to grant anticipatory bail to the present applicant. Such a person, who does not cooperate with the investigation at all, is not entitled to get any relief from this Court by way of anticipatory bail.

11. The anticipatory bail application is, accordingly, **rejected**.

Order Date :- 20.11.2023

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