

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11951 of 2023

Applicant :- Alok @ Brijesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Anuruddh Chaturvedi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Anuruddh Chaturvedi, learned counsel for the applicant, Sri Pranshu Kumar, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case No.803 of 2017, arising out of Case Crime No.183 of 2016, under Sections 376, 452, 323, 506 I.P.C., Police Station Bhognipur, District Kanpur Dehat, during the pendency of trial.
4. As per prosecution story, the applicant is stated to be the neighbour of the informant and had entered into corporeal relationship with her for four years on the promise of marrying her but later on he is stated to have refused to marry her out of fear of his family members. The applicant and other co-accused persons are stated to have barged into the house of the informant on 11.2.2016 at about 08:00 p.m. and assaulted her.
5. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. The applicant was ready to marry the victim as he was Class-IV employee in IT department. The families had fallen apart as FIR was instituted by the mother of the applicant against the family members of the informant on 14.3.2016 and the present FIR has been instituted three days after the said FIR, i.e. on 17.3.2016. Learned counsel has also placed reliance on the statement of the victim recorded under Section 164 Cr.P.C., whereby she has categorically stated that the applicant is not ready to marry her out of fear of his family members, as such, the applicant is entitled for anticipatory bail.
6. Learned counsel for the applicant has further stated that although the applicant had filed petitions under Section 482 Cr.P.C. before this Court as Application U/S 482 Cr.P.C. Nos.34347 of 2016 and 19130 of 2022 which were disposed of and the applicant was not granted any relief whatsoever, but the applicant and other co-accused persons were granted interim protection in Criminal Misc. Writ Petition No.6740 of 2016.

Subsequently, the final report (charge-sheet) was filed, as such, the applicant had to take recourse to the petition under Section 482 Cr.P.C. The applicant has apprehension of his arrest. Learned counsel has stated that the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

7. Per contra, learned AGA has vehemently opposed the anticipatory bail application on the ground that the applicant is dillydallying since 2016 and has filed petitions under Section 482 Cr.P.C. twice and the first one was disposed of way back in the year 2016 and the latest one was filed in the year 2022, as such he is not entitled for anticipatory bail in the light of paragraph-43 of the settled law of this Court in the case of ***Shivam vs. State of U.P. and Another*** reported in ***AirOnline 2021 All 484***. Learned A.G.A. has further stated that the applicant has a criminal history of one case, i.e. Case Crime No.486 of 2020, registered under Sections 323, 452, 354-Ka, 504, 506 I.P.C. at Police Station- Bhognipur, District Kanpur Dehat and he has not filed any orders regarding the said case.

8. In rebuttal, learned counsel for the applicant has stated that the said FIR has been instituted subsequent to the present FIR that too in the year 2020 which has no bearing on the merits of the present case.

9. After hearing learned counsel for the applicant as well as learned A.G.A. and taking into consideration that the FIR in the instant case was instituted in the year 2016 and the final report (charge-sheet) was filed in the year 2016 itself and the fact that applicant had filed petitions under Section 482 Cr.P.C. twice and failed in it and in the light of the judgment in ***Shivam (supra)*** coupled with the fact that there is no explanation of criminal history of the applicant, I do not find it a fit case for grant of anticipatory bail to the applicant.

10. The present anticipatory bail application is hereby found devoid of merits and is accordingly ***rejected***.

11. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 1.11.2023/ Vikas

[Krishan Pahal, J.]