

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12050 of 2023

Applicant :- Santosh Tiwari

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Abhishek Chauhan, Naveen
Prakash, Sumant Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Learned A.G.A. has informed that notice to the informant has been served on 21.10.2023.
3. Heard Sri Abhishek Chauhan, learned counsel for the applicant and Sri Sunil Kumar, learned A.G.A. for the State as well as perused the record.
4. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.782 of 2023, registered under Section 385 I.P.C., 16/17 of POCSO Act and 67 of Information Technology (Amendment) Act, 2000 at Police Station- Gulariha, District- Gorakhpur with a prayer to enlarge him on anticipatory bail.
5. As per prosecution story, the victim is stated to have entered into corporeal relationship with one Karan and the said act is stated to have been recorded in a camera. Both were having relationship since long and were hell bent on marrying each other, but subsequent to it they met the applicant, who is stated to be an astrologer, who told that their marriage cannot be solemnized due to certain constellations as the girl is Mangalik, as such, the victim was taken to Mumbai. The applicant saw a video of the victim with Karan and is stated to have asked her to send her another indecent video lest he shall make the video viral recorded with co-accused Karan.
6. It is further alleged that the victim is stated to have succumbed to said pressure and send several videos of her corporeal relation with Sanni Badal. The said videos are stated to have been sent to

various relatives of the victim by the applicant which were seen by the informant himself.

7. Learned counsel for the applicant has stated that he has been falsely implicated in this case. There are no allegations against the applicant of having committed any sexual offence with the victim. The only allegations against him are of making viral the said videos. Learned counsel has stated that the said allegations against the applicant have been escalated later on as he had asked the victim and the co-accused Karan to refrain from marrying each other due to their different constellations.

8. Learned counsel for the applicant has further stated that the FIR is delayed by about eight months and there is no explanation of the said delay caused. The applicant has no criminal history to his credit. 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. 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.

9. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application but unable to dispute the submissions raised by the learned counsel for the applicant.

10. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "***Sushila Aggarwal Vs. State (NCT of Delhi)*, (2020) 5 SCC 1**". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

11. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Santosh Tiwari** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(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 the previous permission of the court;

(iv). that in case charge-sheet is submitted 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;

(vii). that in case of breach of any of the above conditions the court concerned shall have the liberty to cancel the bail.

12. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 17.11.2023

Vikas

[Krishan Pahal, J.]