Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11906 of 2023

Applicant :- Shahzad Alvi
Opposite Party :- State Of U.P. And Another
Counsel for Applicant :- Sanjay Pathak,Chandrajeet Yadav
Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.

2. Heard Sri Sanjay Pathak, learned counsel for the applicant and Sri V.K.S. Parmar, learned A.G.A. for the State and also perused the record.

3. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 068 of 2022, under Sections 452, 376D, 120-B of IPC, Police Station Kotwali Nagar, District Aligarh, with a prayer to enlarge him on anticipatory bail.

4. As per prosecution story, the applicant along with other named accused persons and one unknown person are stated to have barged into the house of the informant in the night of 18.10.2020 at about 11:00 PM and are stated to have committed gang rape with her.

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 apprehension of his arrest. He has nothing to do with the said offence as alleged by the prosecution. Learned counsel has further stated that the FIR is delayed by about one and a half years and there is no explanation of the said delay caused. The criminal antecedents of the applicant stand explained as closure report has been filed in all those five cases. The applicant has no other criminal history except the said five cases. In the present case also, closure report has been filed by the police but on the protest petition filed by the complainant, he has been summoned vide order dated 31.01.2023 by the Additional Chief Judicial Magistrate, Court No.2, Aligarh. Learned counsel has stated that the impugned summoning order has been passed without application of mind and is a cryptic one. It is further

submitted that the applicant is entitled for bail as he has not misused the liberty granted to him. 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. has vehemently opposed the prayer for grant of anticipatory bail on the ground that the application u/s 156(3) Cr.P.C. was moved on 28.10.2020 itself that is barely delayed by 10 days. Prior to it, the victim had given applications before the authorities but the applicant being an influential person as Counsellor of the locality did not let the FIR instituted. Learned AGA has also stated that the criminal history of the applicant has not been explained as neither any questionnaire regarding the applicant wanted in any case nor any bail order has been annexed in the affidavit.

7. After hearing the learned counsel for the parties and taking into consideration the fact that there is a criminal history of five cases assigned to the applicant which has not been properly explained, I do not find it a fit case to enlarge the applicant on anticipatory bail.

8. Accordingly, the anticipatory bail application is **rejected**.

(Justice Krishan Pahal)

Order Date :- 31.10.2023
Siddhant

Digitally signed by :-
SIDDHANT SAHU
High Court of Judicature at Allahabad