

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12288 of 2023

Applicant :- Kanheya

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

Counsel for Applicant :- Ashok Kumar Srivastava, Indrajeet Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised. As informed by learned A.G.A., notice to the opposite party no.4 has been served on 26.10.2023. Heard Sri Ashok Kumar Srivastava, learned counsel for the applicant, Sri Prateek Samadhiya, 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 F.I.R./Case Crime No. 130 of 2022, under Sections 363, 366, 376 IPC and 5/6 POCSO Act, Police Station Hathras Gate, District Hathras, with a prayer to enlarge him on anticipatory bail.

3. As per prosecution story, the applicant alongwith two other co-accused persons Sukhpal and Reshma is stated to have enticed away the minor daughter of the informant on 26.4.2022 at about 2.30 pm.

4. 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. Learned counsel has next stated that as per the radiologist report dated 8.8.2023, the age of the victim was found to be 19-20 years, as such, on the date of occurrence, she was major.

5. Learned counsel has further stated that the victim is the consenting party, as is evident from the statement recorded u/s 164 Cr.P.C., whereby she has categorically stated that she was beaten up by her parents and so, she had gone out of her own sweet will with the applicant and both of them had gone to North East and

she had married the applicant in Assam and she is pregnant. Learned counsel has also stated that subsequent to it, the victim had given birth to a baby boy and she wants to live with her husband (applicant). Learned counsel has further stated that the police is running after him, although he was granted interim protection but, more than six months have elapsed. The final report (charge sheet) has yet not been submitted. Learned counsel has stated that the applicant is ready to co-operate during the investigation and trial also.

6. 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. It is further submitted that the applicant has no criminal antecedents. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned A.G.A. and learned counsel for the informant have vehemently opposed the prayer for grant of anticipatory bail. However, learned A.G.A. is unable to dispute the fact regarding statement of the victim recorded u/s 164 Cr.P.C.

8. On due consideration to the arguments advanced by the learned counsel for the parties 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.

9. 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**.

10. In the event of arrest of the applicant, **Kanheya** 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;

11. 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.

12. 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 :- 8.11.2023

Shalini