

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11982 of 2023

Applicant :- Vishal Sharma

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ishwar Chandra Tyagi, Om Prakash
Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Vishal Sharma** seeking anticipatory bail in Case Crime No.305 of 2023, under Sections 366, 342, 323, 354, 376, 504, 506 IPC, P.S. Sikriganj, District Gorakhpur.

2. Heard Shri Om Prakash Yadav, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. It is further submitted that the applicant never took the prosecutrix to any place with him and this fact finds support from the allegations made in the F.I.R. itself. It is also submitted that although allegation for commission of rape has been levelled in the F.I.R. against the present applicant also but in her statement recorded under Section 164 CrPC the prosecutrix has not supported the prosecution version on this point. It is further submitted that the medical evidence does not support the prosecution version. It is also submitted that as a matter of fact the main accused Virat Sharma, who happens to be the real brother of the present applicant, has performed marriage with the prosecutrix. It is further submitted that the applicant had never any love affair with the victim of this case and the prosecution story is not plausible and natural that the present applicant committed rape with the victim who was going to be married with his real brother. Applicant has no criminal history to his credit. The investigation of the case is going-on and the applicant is cooperating with the same. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and will co-

operate in the investigation and would obey all conditions of bail.

4. Learned A.G.A. has opposed the prayer for anticipatory bail and submitted that in the present case on the false pretext of marriage rape was committed with the victim by the main accused Virat Sharma and also by the present applicant.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. It appears from the perusal of the record that the major victim of this case eloped with the main accused Virat Sharma and went to Mumbai with him on the false pretext of marriage on the part of the main accused Virat Sharma where he committed rape with her and his brother, the present applicant, also committed rape with the victim and anyhow she rescued and came to her house. F.I.R. was lodged 16.9.2023 and investigation started, which is still going on. It also reveals from the perusal of the record that no allegation of rape has been levelled by the victim against the present applicant in her statement recorded under Section 164 CrPC. Investigation of the case is going on and the applicant is cooperating with the same.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

8. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is

made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

9. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till filing of police report under Section 173(2) CrPC before the Competent Court.

10. The application is **allowed** accordingly.

11. In the event of arrest of the applicant, he shall be released on anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

12. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 20.11.2023

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