

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 12617 of 2023

Applicant :- Nagesh

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

Counsel for Applicant :- Mahipal Singh, Prashant Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant - **Nagesh** seeking anticipatory bail in Case Crime No.473 of 2022, under Section 376 IPC, Police Station Baldev, District Mathura.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. The husband of the lady informant died in a road accident and on the false pretext of marriage, the present applicant, who happens to be the brother-in-law (devar) of the victim, physically exploited the informant and committed rape against her. Subsequently, she came to know that his marriage has been settled somewhere else and F.I.R. was lodged on 4.11.2022 and now charge-sheet has been submitted into the matter.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. He has been falsely roped in this matter. It is further submitted that the whole prosecution story, as culled out from the F.I.R., is false and fabricated. No physical relations ever took place between the applicant and the victim of this case. It is also submitted that the applicant never made any promise with the prosecutrix to marry her. He was a bachelor and was free to marry anywhere and he was not bound to marry with a widow. It is also submitted that the medical evidence does not support the prosecution version. It is also submitted that earlier in Crl. Misc. Writ Petition No.1636 of 2023 filed by the applicant, protection was granted to the applicant by this Court vide order dated 31.1.2023 and the said liberty was never misused by the applicant. It is also submitted that independent witnesses of the case have not supported the prosecution version, as alleged in the F.I.R. It is also submitted that now the applicant is entitled for anticipatory bail.
5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and at the

very outset it has been argued that process under Section 82 Cr.P.C. has been issued against the applicant and on the ground of his abscondence, an F.I.R. as case crime no.40 of 2023 under Section 174-A IPC has already been lodged against the applicant on 29.01.2023, which is prior to the order passed in Crl. Misc. Writ Petition No.1636 of 2023. It is further submitted that non-bailable warrant against the applicant was issued on 11.01.2023 whereas process under section 82 Cr.P.C. was issued against him on 24.1.2023.

6. From the above, it is gathered that after rejection of the application for grant of anticipatory bail from the Sessions Court at Mathura vide order dated 26.9.2023, the present applicant did not take shelter of this Court immediately and the present anticipatory bail application was filed on 26.10.2023 i.e. after one month. At the same time, it is also gathered from the material on record that Crl. Misc. Writ Petition No.1636 of 2023 was preferred by the applicant before this Court on 25.1.2023 whereas a process under section 82 Cr.P.C. was already issued against him on 24.1.2023 i.e. prior to the filing of the aforesaid writ petition, which means that when the writ petition was filed before this Court, the applicant was already a proclaimed offender and the protection vide order dated 31.1.2023 was granted to the applicant by this Court provided he cooperates with the investigation. Before passing of the aforesaid order dated 31.1.2023, an F.I.R. was also lodged under section 174-A IPC on the ground of abscondence of the applicant on 29.1.2023. It may be summarized like this that when Crl. Misc. Writ Petition No.1636 of 2023 was preferred before this Court, the applicant had already been declared a proclaimed offender whereas F.I.R. under section 174-A IPC was lodged during pendency of the writ petition. The factum of the applicant being a proclaimed offender was not brought to the notice of the Writ Court, which helped the applicant to obtain a protection order in his favour from the Writ Court. Therefore, no exceptional or rare case exists in favour of the applicant in view of the law laid down by the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085, decided on 29.8.2023** and since he was a proclaimed offender, his present anticipatory bail application is not maintainable in the light of the law laid down in Dharamraj (supra) case.

7. In view of the aforesaid observations, the present anticipatory bail application is accordingly **dismissed**.

Order Date :- 20.11.2023

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