

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12134 of 2023

Applicant :- Faim And Another

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

Counsel for Applicant :- Vivek Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicants - **Faim** and **Rashid** seeking anticipatory bail in Case Crime No. 293 of 2017, under Sections 366, 376-D IPC, Police Station Saidnagli, District Amroha.
2. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.
3. It is submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. It is further submitted that the applicant no.2 is not named in the F.I.R. and after recovery of the victim, she has made a categorical statement under Section 161 CrPC that it was co-accused Ismail, who enticed away her and F.I.R. lodged against Faheem is totally false. Victim is major and has performed her Nikah with the co-accused Israil. It is further submitted that in her statement recorded under Section 164 CrPC the prosecutrix has made a twisted story and has stated that the present applicants alongwith co-accused Tahir took her from the house in unconscious state and committed gang rape and subsequently she was sold to co-accused Israil and on the basis of forged and fabricated papers a false Court marriage was shown and she has been recovered from the possession of co-accused Israil. It is further submitted that after lodging the F.I.R., Criminal Misc. Writ Petition No. 24237 of 2017 was preferred by the applicants before this Court wherein vide order dated 7.11.2017 an interim protection was granted to them till submission of police report under Section 173(2) CrPC. It is also submitted that after submission of charge sheet, applications under Section 482 Nos. 6281 of 2019 and 32090 of 2018 were moved by the applicant nos.1 and 2 before this Court and they got protection

in the said applications vide orders dated 15.2.2019 and 18.9.2018, respectively, however, subsequently, following the dictum of Hon'ble Apex Court in **Asian Resurfacing of Road Agency Pvt. Ltd. and another vs. Central Bureau of Investigation, (2018) 16 SCC 299** the trial court proceeded with the matter vide order dated 11.7.2023. After completion of investigation, charge sheet has been submitted in the matter. No process under Sections 82 and 83 CrPC has been issued against the applicants and the applicants have not been declared absconder. In case applicants are granted anticipatory bail, they will not misuse the liberty of bail and would obey all conditions of bail. It is also submitted that the applicants have been falsely implicated in this case whereas the crime, if any, has been committed by the main accused Israil. It is lastly submitted that the medical evidence does not corroborate the prosecution version.

4. Learned A.G.A. opposed the prayer for anticipatory bail.

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

6. The prosecution story, as unfolded in the F.I.R., is that the applicant no.1 Faheem enticed away the victim / daughter of the informant. F.I.R. was lodged and after investigation charge sheet has been submitted. It reveals from the perusal of the record that the prosecutrix has made contradictory statements in her statements recorded under Sections 161 and 164 CrPC and it appears that a false story has been developed by her in her statement under Section 164 CrPC. Prosecution has failed to explain as to why the clear picture was not stated by the victim in her statement under Section 161 CrPC. After submission of charge sheet, no custodial interrogation is required.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court 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. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicants 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 applicants till the end of trial.

9. The application is **allowed** accordingly.

10. In the event of arrest of the applicants, they shall be released on anticipatory bail on their furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

(i) The applicants shall make themselves available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) The applicants 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 applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

11. In case of default of any of the conditions, the same may be a ground for cancellation of protection granted to the applicants.

Order Date :- 3.11.2023

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