

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12129 of 2023

Applicant :- Aftab

Opposite Party :- State of U.P.

Counsel for Applicant :- Rama Shankar Mishra, Ramendra Kumar Tripathi

Counsel for Opposite Party :- G.A., Braham Singh, Sushil Kumar Tewari

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Aftab** seeking anticipatory bail in Case Crime No. 357 of 2023, under Sections 376, 323, 506 IPC and 3/4 Muslim Women (Protection of Rights on Marriage) Act, 2019, Police Station Amroha Dehat, District Amroha.

2. Heard learned counsel for the applicant, learned counsel for the informant as well as the 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 his 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 prosecution story is highly improbable, as it was unnatural for the applicant to commit rape with the victim in the house where several persons were residing. It is also submitted that since the victim of this case had a grudge with her husband, the applicant being the real brother of the husband of the victim, has been falsely implicated in this case. It is also submitted that the medical evidence does not corroborate the prosecution version. 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 shall not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. and learned counsel for the informant opposed the prayer for anticipatory bail and submitted that since the husband of the victim was not residing with her, the present

applicant taking advantage of this situation committed rape repeatedly upon the prosecutrix. The victim in her statements recorded under Sections 161 and 164 CrPC has fully corroborated the version of the F.I.R. and at this stage there is no possibility of any false implication of the present applicant. Allegation of rape has not been levelled against her devar or father-in-law by the victim and this fact also goes to show that the allegations are true and correct.

5. In this matter from the perusal of the record it reveals that the husband of the victim was residing at Saudi Arabia for the sake of his employment and in the meanwhile the present applicant - brother-in-law (Jeth) of the victim committed rape against her and thereafter it became a repeated occurrence and when the matter was brought to the knowledge of her husband, he also offered triple talaq to the victim on telephone. F.I.R. was lodged on 26.8.2023 and investigation started, which is still going on. It also reveals that it is a case of rape committed against a married lady by her real brother-in-law (Jeth).

6. 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.

7. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

8. The application is **rejected**.

Order Date :- 3.11.2023

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