

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12168 of 2023**

Applicant :- Dharmendra Sharma

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

Counsel for Applicant :- Arvind Prabodh Dubey, Naushad Alam

Counsel for Opposite Party :- G.A., Krishna Kumar Shukla

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. This application has been moved on behalf of the applicant **Dharmendra Sharma** seeking anticipatory bail in Case Crime No. 1174 of 2022, under Sections 376, 328, 506, 354 (c) IPC, Police Station Baradari, District- Bareilly.

3. On the false pretext of marriage the applicant developed friendship with the victim of the case and when on his insistence the victim went to meet him, he committed rape to the victim after administering some intoxicant in the cold drink and making her unconscious. The applicant also prepared some obscene videos and photoes and subsequently tried to black mail her on the basis of the same. FIR was lodged on 26.12.2022 and investigation started, which is going on.

4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It is further submitted that the victim of the case is a major lady, she was a consenting party to the relation and only on account of some misunderstanding the present criminal proceeding has been initiated by her. The applicant never administered any intoxicant to the victim of the case. He has been falsely implicated in this case due to some ulterior motive. The applicant is a respectable person and is entitled for anticipatory bail. He is also cooperative with the investigation of the case. It is lastly submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It is submitted that the victim of this case no doubt had some friendly chats with the applicant and on his call she went to meet him but she could never imagine that the applicant would commit rape to her after administering some intoxicant and making her unconscious. In her statement under Section 161 and 164 Cr.P.C. the victim has fully corroborated the prosecution version and has narrated the story as to how the rape was committed to her by the present applicant. It is also submitted that the victim is a major lady but she has never been a consensual party to the physical relations. The same story has been narrated by the victim before the doctor as well. It is further submitted that the medical report corroborates the prosecution version, hence, the applicant is not entitled for anticipatory bail.

6. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled 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 and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

8. The anticipatory bail application is **rejected**.

Order Date :- 24.11.2023

Fhd