

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12210 of 2023

Applicant :- Vipin Maurya

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Pathak

Counsel for Opposite Party :- G.A.

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. Apprehending his arrest in Case Crime No.409 of 2022, under Sections 376 (2) N, 328, 504, 506 IPC, Police Station Baradari, District Bareilly, the present anticipatory bail application has been moved by the applicant - **Vipin Maurya** seeking anticipatory bail.
3. Rape was committed by the applicant with the prosecutrix of this case by administering some intoxicant in her tea and thereby making her unconscious in a hotel room on 3.7.2021. When it was subsequently complained by the prosecutrix, he made a promise to marry with her, but subsequently denied. F.I.R. was lodged on 5.5.2022 and now after investigation, charge-sheet has been submitted in 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. He has been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been filed. The applicant has been cooperative during the course of investigation. It is further submitted that it is wrong to say that the applicant ever met with the prosecutrix in the hotel Vasundhara Heights. It is also submitted that the prosecutrix and the applicant had a friendly relationship since 2018 and they were consenting to make physical relations with each other, but no rape was committed with the prosecutrix by the applicant as per the story narrated in the F.I.R. and in the statement of the prosecutrix made u/s 161 and 164 Cr.P.C. It is further submitted that the medical evidence does not support the prosecution evidence. It is also

submitted that during the course of investigation, a protection was granted to the applicant in Crl. Misc. Anticipatory Bail Application No.5639 of 2022 till submission of police report u/s 173 (2) Cr.P.C. by this Court vide order dated 20.7.2022. It is also submitted that the F.I.R. of this case has been lodged belatedly, for which no explanation has been offered by the prosecution. It is also submitted that no offence has been committed by the applicant and he has been cooperative with the investigation of the case and now after submission of charge-sheet, he is entitled for anticipatory bail.

5. On the other hand, learned A.G.A. has vehemently opposed the prayer for bail and submitted that the I.O. of the case has collected ample and sufficient evidence to the effect that the prosecutrix and the accused applicant had met in the hotel, as mentioned in the F.I.R. and the statement of hotel staff has been collected by the I.O. in this regard. It is further submitted that even if the prosecutrix had some friendly relations with the applicant even then he had no right to commit rape upon her by making her unconscious after administering some intoxicant in her tea. It is further submitted that even after the incident, the prosecutrix was ready to marry with the applicant, but he refused to marry her. It is further submitted that there is no possibility of false implication of the applicant. The prosecutrix, at the time of her medical examination, has narrated the same story before the doctor as well, as averred in the F.I.R. It is also submitted that delay in lodging the F.I.R. in cases of sexual offence does not make any adverse effect upon the prosecution case.

6. In the present case, a young lady has been sexually exploited by the applicant by administering some intoxicant in her tea and by making her unconscious in a hotel. Offence is very serious in nature. Charge-sheet has been submitted in the matter.

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. 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, in my view, it is not a fit case for anticipatory bail to the applicant.

9. The anticipatory bail application is, accordingly, **rejected**.

Order Date :- 17.11.2023

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