

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 12483 of 2023

Applicant :- Jatin Kumar

Opposite Party :- State Of U.P.And 3 Others

Counsel for Applicant :- Sushil Kumar Chaturvedi,Sangeeta Shukla

Counsel for Opposite Party :- G.A.,Bipin Pal Singh,Sandeep Kumar Dubey

Hon'ble Krishan Pahal,J.

1. List has been revised. Heard Sri Anand Kumar Tiwari, learned Advocate holding brief for Sri Sushil Kumar Chaturvedi, learned counsel for the applicant and Sri Bipin Pal Singh, learned counsel for the informant as well as Sri Shakeel Ahmad, learned A.G.A. for the State and Sri Sandeep Kumar Dubey, legal Service Committee, and also perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 314 of 2023, under Sections 354 IPC and 7/8 Protection of Children from Sexual Offences Act, 2012, Police Station Hathras Gate, District Hathras, with a prayer to enlarge him on anticipatory bail.

3. As per prosecution story, the applicant is stated to have befriended the minor daughter of the informant and, as such, the victim was scolded by her mother to refrain from talking to him, but the applicant is stated to have outraged her modesty several times. On complaining about the matter to the mother of the applicant, she is stated to have asked him to do whatsoever she wants to do.

4. Learned counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has the apprehension of his arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. Learned counsel has next stated that there is no mentioning of date and time of offence in it. Learned counsel has further stated that as per the school certificate, the age of the victim is 16 years. Learned counsel has next stated that as per the ossification test report, the age of the victim is 18 years and a leverage of two years should be granted to the applicant on upper side. It is also stated that the allegations are vague as per the statement of the victim recorded u/s 164 Cr.P.C. The incidence of outraging the modesty is of one month back, as such, the applicant is entitled for anticipatory bail.

5. Learned counsel for the applicant has placed much reliance on the settled case law of the Apex Court in Sushil Kumar vs. Rakesh Kumar, (2003) 8 SCC 673, wherein it has been stated that it is more often in the Indian Society that person shows the age of their wards much below than their actual age.

6. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The

circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further submitted that the applicant has no criminal antecedents. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned A.G.A. and learned counsel for the informant have vehemently opposed the prayer for grant of anticipatory bail on the ground that as per the school certificate, her age is 16 years.

8. On due consideration to the arguments advanced by the learned counsel for the parties, the factum of delay in lodging the FIR, and in view of the law laid down by the Apex Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**", the applicant is entitled to be granted anticipatory bail in this case.

9. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is **allowed**.

10. In the event of arrest of the applicant, **Jatin Kumar** involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

- i. that the applicant shall make himself available for interrogation by a police officer as and when required;
- ii. that the applicant 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;
- iii. that the applicant shall not leave India without previous permission of the court;
- iv. that the applicant shall not tamper with the evidence during the trial;
- v. that the applicant shall not pressurize/ intimidate the prosecution witness;
- vi. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

11. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

12. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 23.11.2023
Shalini