

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12372 of 2023

Applicant :- Pawan Vishwakarma @ Pawan Kumar

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

Counsel for Applicant :- Jitendra Singh, Manoj Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicant- **Pawan Vishwakarma @ Pawan Kumar** in connection with Case Crime No. 415 of 2023, under sections 120-B, 328, 506, 376(2)(n) IPC, P.S. Maudaha, District Hamirpur.

3. It is alleged in the F.I.R. that the victim and accused applicant were engaged in friendly relations with each other and their marriage was also settled and subsequently physical relation was also developed by the applicant with the victim of the case forcefully and for a period of about three years they had been living as husband and wife. Subsequently when the applicant refused to marry her, F.I.R. was lodged on 8.10.2023 and investigation started, which is still going on.

4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of 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 it is a case on consensual relationship. The prosecutrix is a major lady and she at her own free will made physical relations with the applicant and was living with the applicant for a period of more than three years as husband and wife. It is next submitted that applicant had never made any promise to marry with the prosecutrix. It is also submitted that no intoxicant was ever administered by the applicant to the victim of the case. It is next submitted that the accused applicant has no criminal history to his credit. The essential ingredients to establish the offence under Section 376(2)(n) are lacking in this matter. 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 and submitted that it is a clear case of rape, as the physical relations were developed with the victim of this case by the applicant on the false pretext of marriage but after satisfying his lust, the applicant refused to marry with her. The prosecutrix has supported the prosecution case in her statements recorded under Sections 161 and 164 CrPC. Medical report also supports the prosecution version. It is also submitted that the applicant has illicit relations with her Bhabhi as well and rape was committed with her several times.

6. Admittedly, the relationship between the parties are purely consensual and that is why, prima faice, crucial ingredients of offence of rape are not founded. The major victim and the applicant had been living in live-in relationship for a period of more than three years. Albeit a sexual relationship between the two adult unmarried persons is not a crime in the eyes of law but so far as the live-in relationship is concerned it is considered that it is made by the parties only to fulfill their physical requirements and also for the feeling of togetherness for some time but there is no promise to marry in such relationship. As the Court feels, such relations are made and developed to avoid the institution of marriage and if the lady victim has been living with the applicant over a period of three years out of her own free will and consent she may not be permitted to make a complaint that she had been physically exploited by the applicant in order to fulfill his lust. Reliance has been placed upon the cases of **Shambhu Karwar Vs. State of U.P. and another, AIR 2022 Supreme Court 3901, Pramod Suryabhan Pawar Vs. State of Maharashtra and another, 2019 9 SCC 608 & Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and another, (2021) 0 Supreme (SC) 182**, wherein the matter was related to consensual relationship between two major persons of opposite sex and benefit was given to the main accused and another law laid down in the case of **Ansaar Mohammad Vs. State of Rajasthan and another 2022 SCC Online SC 886** wherein almost in similar matter, anticipatory bail was granted to the accused applicant by the Hon'ble Apex Court.

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 a fit case for anticipatory bail to the applicant till submission of police report under Section 173(2) CrPC before the Competent Court.

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

10. In the event of arrest of the applicant, he shall be released on anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

11. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 21.11.2023

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