

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 12347 of 2023

Applicant :- Rakesh And Another

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

Counsel for Applicant :- Rohan Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Mr. Rohan Gupta, learned counsel for the applicants and learned Additional Government Advocate for the State.
2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Complaint Case No.1736 of 2022, under Section 376-D IPC, Police Station Mahila Thana, District Amroha.
3. In short, the prosecution story is that on 12.04.2022 at about 10.00 pm in the night, when the complainant went to provide water to her aunt, she encountered by the accused persons, namely, Rakesh, Golu, Sajay, Bablu and Verma, who were already present at the place of occurrence and subsequently the accused persons seized the complainant and forcibly took her to a nearby forest area and committed rape upon her.
4. Learned counsel for the applicants submits that the applicants have been falsely implicated in the present case due to an ongoing family rivalry and applicants bear no connection or involvement with the alleged incident. As per statement made under Section 200 Cr.P.C., the victim was 20 years old at the time of alleged incident. He further submits that the complainant has filed an application under Section 156 (3) Cr.P.C. for lodging the FIR against the applicants which was treated as complaint case and on the basis of statement of the victim recorded under Section 200 Cr.P.C. as well as witnesses

recorded under Section 202 Cr.P.C., the court below has summoned the applicants to face trial under the above mentioned sections. He further submits that the complainant used her daughter as tool against the applicants and their family members and has initiated the instant proceeding against the applicants as a counterblast to the FIR lodged by one Suresh, the cousin of the applicants against the real brother of the complainant being Case Crime No.56 of 2022, under Sections 354-A IPC and 7/8 POCSO Act at Police Station Rahra, District Amroha. He further submits that at the time of alleged incident, the applicants were not present at the place of occurrence. The applicant no.2 is a minor and a student of Class-12 and his future will be ruined if he is arrested. He further submits that similarly placed co-accused Bablu has already been granted regular bail by a coordinate Bench of this Court vide order dated 23.05.2023 passed in Criminal Misc. Bail Application No.23138 of 2023, copy of bail order has been annexed as Annexure No.13 to the affidavit. He further submits that the applicants are having no previous criminal history as has been mentioned in paragraph 38 of the affidavit.

5. Lastly, it has been argued that the applicants have apprehension of imminent arrest and in case, applicants are released on anticipatory bail, they will not misuse the liberty and would co-operate with the trial.

6. Learned A.G.A. vehemently opposed the prayer for anticipatory bail of the applicants by submitting that the complainant as well as witnesses have fully supported the prosecution story. The applicants have forcibly committed rape upon her. The allegations are very serious and keeping in view the seriousness of the allegations made against the applicants, applicants are not entitled to grant of anticipatory bail. The

apprehension of the applicants is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

7. The victim in her statement recorded under Section 200 Cr.P.C. has clearly stated that on the fateful day, the accused persons, namely, Sanjay, Verma, Rakesh and Bablu closed her mouth and tied her hands and also tied a cloth over her mouth and took her away to a nearby forest area i.e. Nangal and on gun point, committed rape upon her one by one. She further stated that another co-accused Golu armed with pistol was standing over my head. The victim has further stated that all accused persons are from her village.

7. In the light of above, looking to the facts and circumstances of this case, submissions of learned counsel for the parties as mentioned above, taking into consideration the role assigned to the applicants as per prosecution case, gravity and nature of accusation, this Court is of the view that no case for exercising its discretionary power under Section 438 Cr.P.C. is made out in favour of the applicants.

8. Accordingly, this application under Section 438 Cr.P.C. is devoid of merit and is hereby **dismissed**.

9. However considering the facts and circumstances of the case, it is directed that in case the applicants appear and surrender before the court below and apply for regular bail, their bail application shall be heard and decided, expeditiously, in accordance with law.

Order Date :- 21.11.2023

Ajeet