

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12387 of 2023

Applicant :- Shyam Sundar Eknouria

Opposite Party :- State of U.P.

Counsel for Applicant :- Tushar Pandey, Rajiv Lochan Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Rajiv Lochan Shukla, learned counsel for the applicant, Sri R.P. Patel, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.369 of 2016, under Sections 417, 420, 376, 313 I.P.C., Police Station Amroha Nagar, District Amroha, during the pendency of trial.
4. As per prosecution story, when the applicant, who happens to be District Backward Class Welfare Officer, was posted at Amroha is stated to have met the informant and promised to marry her and had given Rs.500/- as gift. Subsequent to it, the applicant is stated to have entered into corporeal relationship with her on the false promise of marriage as it came to the knowledge of the informant that he was already married since 2011. The applicant is stated to have subsequently taken up the informant to Mugalsarai, district Chandauli, whereby her fetus was aborted, as such, the FIR was instituted against the applicant on 29.9.2016.
5. Learned counsel for the applicant has submitted that the applicant is a public servant and there is no likelihood of him absconding. The said corporeal relationship between the two went on for more than four years, as such, the inordinate delay in lodging the FIR goes against the informant. Learned counsel has further stated that after thorough investigation the closure report was filed by the Investigating Officer on 12.3.2017, but on the protest petition of the informant, the applicant was summoned vide order dated 13.7.2018. Learned counsel has stated that the applicant had preferred a petition under Section 482 Cr.PC. against the said summoning order which was disposed of by this Court vide order dated 10.4.2019 passed in

Application U/S 482 Cr.P.C. No.28404 of 2018 and the applicant was directed to apply for bail.

6. Learned counsel for the applicant has further stated that subsequent to it, the period of lock-down came and the applicant could not appear before the court concerned and coercive measures were taken up against him. Then the applicant had challenged the issuance of non-bailable warrant against him by filing another petition under Section 482 Cr.P.C. which was also disposed of by this Court vide order dated 20.9.2023 passed in Application U/S 482 Cr.P.C. No.31166 of 2023 and it was directed that the applicant shall appear before the court concerned within three weeks and move an application for recall of non-bailable warrant and the same shall be disposed of expeditiously in accordance with law. Subsequent to it, the applicant had applied for anticipatory bail before the Sessions Judge which was dismissed, as such, the present anticipatory bail application has been pressed.

7. Learned counsel for the applicant has further stated that bare perusal of the order-sheet indicates that coercive measures have been taken against the applicant only on the basis of suspicion as it has been opined by the concerned C.J.M. that the police was hand in glove with the applicant and was not letting the NBW and proceedings of 82 Cr.P.C. served on him, which is but evident from the order-sheet dated 19.9.2022. Learned counsel has stated that the criminal history of two cases assigned to the applicant stands explained and as per his knowledge the applicant is on bail in both the cases.

8. Learned counsel for the applicant has further placed reliance on the paragraphs- 10, 11, 12 & 13 of the judgment of this Court passed in Criminal Misc. Bail Application No.23551 of 2023, whereby the concerned accused was granted regular bail on the basis of his long standing corporeal relationship with the victim. The paragraphs- 10, 11, 12 & 13 of the said judgment read as under:-

"10. This court finds that large number of cases are coming in courts wherein girls and women take undue advantage by lodging First Information Report on false allegations after indulging in long physical relationship with the accused. The time has come that courts should be very cautious in considering such bail applications. The law is heavily biased against males. It is very easy to make any wild allegations in First Information Report and implicate anyone on such allegations as in the present case.

11. First Information Reports are lodged invariably after due consultation with expert incorporating all the necessary ingredients required for making out a clear case for implication under different provisions of law. First Information Reports are not being lodged under section 154(1)

Cr.P.C., by directly giving information to officer incharge of police station orally. Section goes as under -

“154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) “

12. The lodging of the FIR is being done invariably by giving a written application at the police station which is always fraught with danger of the false implication like in the present case. Such applications are drafted by experts in courts or the Munshi/Head clerk in police station. The experts are aware of the ingredients of each and every provisions of penal law. They incorporate the allegations in such a way so that accused may not be able to get even bail easily and early. Just a cursory glance at allegations made in the First Information Report is sufficient for the court to throw the file, without any application of mind further. The State of affairs has gained alarming proportion. An honestly written First Information Report is very short and is shorn of any unnecessary and false allegation. This is the test, but it is seldom realised.

13. The culture of openness being spread by social media, movies, T.V. shows, etc., is being imitated by adolescent/young boys and girls but when their conduct comes in conflict with Indian social and family norms and it comes to protecting the honour of the family of the girl and the honour of girl, such maliciously false First Information Reports are lodged. Such First Information Reports are also lodged when after living in live-in-relationship for sometime/long time, dispute takes place between the boy and girl on any issue. Nature of partner unfolds before the other partner with time and then whey they realize that their relationship cannot continue for life, trouble starts. Since girls/women have upper hand when it comes to protection of law, they succeed easily in implicating a boy or man in the case like of the present nature. The traditional perception of such crimes has become irrelevant. The effect of social media, movies, etc., in raising the awareness level of adolescents and loss of innocence at comparatively younger age is clearly discernible. The traditional presumption of innocence has given way to an untimely loss of innocence resulting in unforeseen deviant behaviour of adolescents which the law never contemplated earlier. Law is dynamic concept and it requires a re-look in such matters very drastically.

9. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application on the ground that already the proceedings under Section 82 and 83 Cr.P.C. are complete. The applicant being a government official is misusing his clout. The proceedings of 82 Cr.P.C. were already complete on 21.7.2023, and subsequent to it, the proceedings of 83 Cr.P.C. have been taken against the applicant. The applicant has misused the process of this Court by filing the petitions under Section 482

Cr.P.C. twice.

10. Learned A.G.A. has further stated that the criminal history of the applicant has not been properly explained as in Case Crime No.231 of 2015, the applicant has not filed any bail order rather it is the order by which it was prayed by the applicant to refuse the remand which was rejected, as such, his remand was taken under Sections 284, 506 I.P.C. Learned A.G.A. has further stated that the present anticipatory bail application is not maintainable in the light of the settled law of the Apex Court passed in case of ***Lavesh vs. State (NCT of Delhi), (2012) 8 SCC 730.***

11. The judgment filed on behalf of the applicant has been passed in a regular bail and is not applicable to the present case.

12. After taking into consideration the rival contentions and the fact that the proceedings of 82 & 83 Cr.P.C. have already been completed against the applicant and he has not appeared before the court concerned in the light of order of this Court passed in Application U/S 482 Cr.P.C. No.31166 of 2023 and also the said arguments tendered at Bar in the light of judgment in ***Lavesh (supra)***, I do not find it a fit case for grant of anticipatory bail to the applicant.

13. The present anticipatory bail application is hereby found devoid of merits and is accordingly ***rejected***.

14. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 8.11.2023

Vikas

[Krishan Pahal, J.]