

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12736 of 2022

Applicant :- Naresh Kumar

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

Counsel for Applicant :- Chandra Prakash Pandey, Firoz Ahmad Khan

Counsel for Opposite Party :- G.A., Ramesh Chandra Upadhyay

Hon'ble Nalin Kumar Srivastava, J.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material available on record.

This application for anticipatory bail has been filed by applicant - **Naresh Kumar** in connection with Case Crime No.363 of 2022, under Sections 376, 420, 506, 509, 120B I.P.C., and 3/4 D.P. Act Police Station Jagdishpura, District Agra.

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. It is further submitted that marriage of the victim was settled with the present applicant and the applicant developed physical relations with the prosecutrix but subsequently he refused to marry with her. After lodging of the F.I.R. the investigation started which is going on. It is further submitted that it is an admitted fact that marriage of prosecutrix with applicant was settled and they used to meet each other. Subsequently, when it came to knowledge of the applicant that the prosecutrix is having relations with some other person also, he refused to marry with her. It is further submitted that no rape was committed by the applicant to the victim of this case. It is further submitted that prosecutrix and applicant are major persons and they were having physical relations with their free own will and in fact this is a case of consensual relations between two major persons of opposite sex. It is further submitted that there is no medical report of the victim on record. It is further submitted that the applicant has been cooperative during the course of investigation. It is further submitted that the applicant has no criminal history to his credit. In case the applicant is granted

anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

On the other hand, learned A.G.A. opposed the prayer for anticipatory bail. It is submitted that after giving her some intoxicated substance and rape committed by applicant with the prosecutrix of this case and prosecutrix in her statement under Sections 161 and 164 Cr.P.C. has clearly stated that offence of rape has been committed against her by the present applicant on the false pretext of marriage and subsequently the applicant refused to marry with her. It is also submitted that offence is serious in nature and he is not entitled for anticipatory bail. In the present case, consensual relations between the two continued for long. If the applicant is said to commit rape after giving her some intoxicant, the prosecution at this stage fails to explain as to why relations between them continued if rape was committed against the prosecutrix.

Although, the charge sheet has been submitted in this matter but in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial. It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court 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.

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 end of the trial in the matter.

The anticipatory bail application is **allowed**.

In the event of arrest of the applicant in the aforesaid case crime, they shall be released on anticipatory bail till end of the trial on their furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The applicant shall make themselves available before the court concerned on the date fixed in the matter;

(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 officer;

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

In case of default of any of the conditions, same may be a ground for cancellation of protection granted to the applicant.

Order Date :- 26.10.2023

Imtiyaz