

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12404 of 2023**

Applicant :- Indal Nishad @ Inder Kumar

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

Counsel for Applicant :- Anil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant - **Indal Nishad @ Inder Kumar** seeking anticipatory bail in Case Crime No. 51 of 2023, under Sections 363, 366, 376 (2)N IPC and Section 5 (J)(2)/6 POCSO Act, Police Station- Chauri Chaura, District- Gorakhpur.
3. The minor neice of the informant was enticed away by the present applicant and when she was not traced FIR was lodged under Section 363 I.P.C. on 8.2.2023 and investigation started, which is 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. Investigation is going on in the matter. It is further submitted that in the present case prosecutrix is a major girl and she at her own will had left her house and was living in association with the present applicant without any coercion and she was a consenting party. It is further submitted that as per educational documents offence under POCSO Act was added to this matter whereas the aforesaid documents do not relate to the school first attended and actually there is no proof regarding the age of the victim on record. It is further submitted that out of the relation between the victim and the present applicant, a baby was also born but could not survive after two months; that the victim has performed her marriage with the applicant in a temple and she is living with him as his wife; that the prosecutrix does not corroborate the prosecution version in her statement under section 161 and 164

Cr.P.C.; that the applicant has been cooperative with the investigation so far. He is having no criminal history to his credit and is entitled for anticipatory bail. It is also submitted that the victim along with the present applicant has moved Cr. Misc. Writ Petition No. 10136 of 2023 before this Court but however, the said writ petition was dismissed leaving liberty to the applicant to apply for anticipatory bail/ bail before the competent Court as permissible in law. 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. It is vehemently submitted that as per educational record the victim on the date of incident was a minor girl was aged about 14 years only and her consent, if any, to establish physical relations with the applicant has no legal value at all. It is further submitted that the prosecutrix herself had refused for internal and external examination by the doctor.

6. In the present case the accused not only enticed away the minor prosecutrix to leave her house and to live with him but also made physical relations with him taking advantage of her tender age and made her pregnant and she also give birth to a child which is not alive. The offence committed by the applicant is heinous. The victim in her statement under Section 164 Cr.P.C. has stated that she performed her marriage with the accused applicant after the birth of the child which means that they were not in marriage relation before the birth of the child. In the facts and circumstances of the present case, the consent, if any, given by the minor prosecutrix has no legal value.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled 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, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

9. The anticipatory bail application is **rejected**.

Order Date :- 8.12.2023

Fhd