

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12352 of 2023

Applicant :- Satish Kumar And Another

Opposite Party :- State Of Up Thru Its Secretary Home

Counsel for Applicant :- Manish Kumar Kashyap, V.P. Singh
Kashyap

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri V.P. Singh Kashyap, learned counsel for the applicants and Sri Shakil Ahmad, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicants in Case Crime No.257 of 2023, registered under Sections 366, 506, 120-B I.P.C. at Police Station- Patiyali, District- Kasganj with a prayer to enlarge them on anticipatory bail.
4. As per prosecution story, the applicants alongwith co-accused person Milal are stated to have enticed away the wife of the informant on 23.2.2023 at about 05:00 p.m. and are stated to have kept her in their house at Bareilly.
5. Learned counsel for the applicants has stated that they have been falsely implicated in this case. Learned counsel has stated that in the statement recorded under Section 164 Cr.P.C., the victim has allayed the allegations of rape against the applicants also. The said prosecution story stands falsified on the ground that there is no possibility of the applicants raping the victim in their house, who are the real brothers living alongwith their wives and children. There is no medical report to substantiate the prosecution story. There are no criminal antecedents to their credit.
6. Learned counsel for the applicants has further stated that the FIR is delayed by about seven months and there is no explanation of the said delay caused. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegations made against them. The circumstances which, as per counsel, led to the false implication of the

applicants have also been touched upon at length. The applicants have apprehension of their arrest. Learned counsel has stated that the applicants undertake that they have co-operated in the investigation and are ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

7. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application on the ground that the victim was recovered after five months, and thereafter, the application under Section 156(3) Cr.P.C. was moved before the C.J.M., Kasganj on 26.7.2023, as such, the delay in lodging the FIR stands explained.

8. On due consideration to the arguments advanced by learned counsel for the applicants as well as learned A.G.A., considering the nature of accusations and antecedents of the applicants and taking into consideration the said inordinate delay and also the fact that the victim herself is a married lady having two siblings, the applicants are liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "*Sushila Aggarwal Vs. State (NCT of Delhi)*, (2020) 5 SCC 1". The future contingencies regarding the anticipatory bail being granted to applicants shall also be taken care of as per the aforesaid judgment of the Apex Court.

9. In view of the above, the anticipatory bail application of the applicants is allowed. Let the accused-applicants- **Satish Kumar** and **Sunil Kumar @ Anil Kumar** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicants shall make themselves available for interrogation by a police officer as and when required;
- (ii). that the applicants 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 them from disclosing such facts to the court or to any police officer or tamper with the evidence;
- (iii). that the applicants shall not leave India without the previous permission of the court;
- (iv). that in case charge-sheet is submitted the applicants shall not tamper with the evidence during the trial;
- (v). that the applicants shall not pressurize/ intimidate the prosecution witness;
- (vi). that the applicants shall appear before the trial court on each date fixed unless personal presence is exempted;
- (vii). that in case of breach of any of the above conditions the court below shall have the liberty to cancel the bail.

10. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 8.11.2023

Vikas

[Krishan Pahal, J.]