

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12650 of 2023

Applicant :- Firoz

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

Counsel for Applicant :- Sandeep Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard Shri Sandeep Kumar Srivastava, learned counsel for the applicant, Shri Manish Joshi, learned counsel for the opposite party no.2, learned A.G.A. for the State and perused the record.

2. This application has been moved on behalf of the applicant **Firoz** seeking anticipatory bail in Case Crime No. 805 of 2023, under Section 376 IPC, Police Station Civil Line, District Moradabad.

3. It is alleged in the F.I.R. that the divorcee prosecutrix was committed rape by the present applicant who happened to visit to her place and taking advantage of the friendly relationship, the applicant committed rape against the victim and also procured some obscene videos and photographs and on the basis of the same, she was continuously blackmailed and raped by the present applicant. F.I.R. was lodged on 23.09.2023 and investigation started, which is still going on.

4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It has been submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. It is further submitted that it is a case of consensual relationship and the victim of this case used to live with him happily and relations were maintained with the consent and free will of the victim of this case. It is next submitted that the applicant used to live at her place since 2019. It is further submitted that earlier, due

to some dispute between the parties, an application with false allegations of rape was given by the victim to P.S. Majhola and in the inquiry, the police found that the parties were in love affair with each other and the victim was living with the accused applicant with her free will. It is also submitted that the medical report does not corroborate the prosecution version. It is next submitted that the applicant is having no criminal history and he has been cooperative with the investigation of the case and as such, he is entitled for anticipatory bail.

6. Learned A.G.A. as well as learned counsel for the informant have opposed the prayer for anticipatory bail and it has been submitted that the complaint against the present applicant firstly was given to Bijnor District by the prosecutrix but when no impartial inquiry was performed, another application was given to S.S.P., Moradabad and then the police registered an F.I.R. against the present applicant. It is further submitted that in her statement under Section 161 Cr.P.C., the prosecutrix has fully corroborated the prosecution version. It is also submitted that it is not a case of consensual relationship and the victim is a divorcee lady and the present applicant, no doubt, used to visit her house but he had no authority to commit rape against her. It is further submitted that the police is still trying to retrieve the obscene videos and photographs but the applicant is not cooperating with the investigation and as such, he is not entitled for anticipatory bail.

7. In this matter, the custodial interrogation of the present applicant appears to be necessary.

8. *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.

9. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature and prima facie, the custodial interrogation of the present applicant is required to make a fair investigation of this case, without expressing any opinion on the merits of the case, in

my view, it is not a fit case for anticipatory bail to the applicant.
Prayer made in the application is refused.

10. The application is **rejected**.

Order Date :- 20.11.2023

Shivangi