

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12756 of 2023

Applicant :- X (Minor)

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

Counsel for Applicant :- Abhishek Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Sri Abhishek Mishra, learned counsel for the applicant and learned Additional Government Advocate for the State as well as perused the material available on record.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.547 of 2023, under Sections 377, 506 IPC and Section 5/6 POCSO Act, 2012, Police Station- Khair, District- Aligarh.

3. As per prosecution story, on 22.7.2023, the applicant along with other three persons, namely, Sagar, Hari Om, Love enticed the son of the informant who is aged about 7 years old, in jungle and there at Tilak Pal's tube well, committed carnal intercourse by threatening him.

4. Learned counsel for the applicant submitted that the applicant is innocent and he has been falsely implicated in the present case. He submitted that as per high school certificate, the applicant is minor and medical report does not support the prosecution story. He submitted the applicant has no criminal history as has been mentioned in paragraph no. 21 of the affidavit. Learned counsel for the applicant further submitted that applicant has apprehension of imminent arrest and in case, applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial. Learned counsel for the applicant further submitted that the applicant seeks permission to appear before the Juvenile Board for declaring the applicant juvenile.

5. Learned A.G.A. opposed the prayer for anticipatory bail of

the applicant and has submitted that the applicant alongwith other co-accused have committed rape upon the victim and as per medical report of the victim, there is abrasion over right knee of size 1x3 cm reddish brown scab and the victim has fully supported the prosecution story in her statements recorded under Section 161 & 164 Cr.P.C., therefore, keeping in view the seriousness of the allegations made against the applicant, he is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

6. After having very carefully examined the submissions made by the learned counsel for the applicant and perused the material brought on record, there is no justification for granting anticipatory bail to the applicant. The prayer for grant of anticipatory bail is hereby **refused**.

7. Accordingly, this application under Section 438 Cr.P.C. is **dismissed**. Applicant is advised to move regular bail application before the appropriate forum and if such application is given, the court below shall consider and disposed of the bail application expeditiously in accordance with law.

Order Date :- 13.12.2023
Krishna*