

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 13340 of 2022

Applicant :- Dilshad

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

Counsel for Applicant :- Surendra Narayan Mishra, Ramesh Kumar Ojha

Counsel for Opposite Party :- G.A., Rizwan Ullah Siddiqui

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant - **Dilshad** seeking anticipatory bail in Case Crime No. 0457 of 2022, under Sections 323, 342, 376, 506 IPC, Police Station Kotwali Dehat, District Saharanpur.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is 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. The husband of victim was arrested in some NDPS Act case and since he was a driver of vehicle of present applicant, the applicant took her to his house and she started living there along with her two kids. In absence of his wife, applicant committed rape upon her one month prior to the lodging of the F.I.R. by threatening her for life and subsequently the wife and mother of present applicant also made attempt to kill the victim by strangulation. After lodging the F.I.R., investigation started and after completion of investigation, charge sheet has been submitted in the matter. No process under Sections 82 and 83 Cr.P.C. has been issued against the applicant and the applicant has not been declared absconder. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

4. It is further submitted that whole prosecution story is highly suspicious and not cognizable. The major victim was living in the house of the applicant willingly and without any protest. It is submitted that wife and mother of the present applicant also reside in the same house and it was not natural that applicant committed rape with victim in his house in the presence of his mother and two kids of victim. It is further submitted that during investigation applicant has been co-operative. The medical evidence does not

corroborate the prosecution version. The total story narrated in the F.I.R. is false and concocted and it is a case of false implication. Applicant have criminal history of one solitary case in which he has already been granted bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail and argued that applicant committed rape upon victim in his own house by threatening her with knife by taking advantage of absence of husband of victim. It is further submitted that she was assaulted by applicant and his family members and she sustained injuries as well. It is further submitted that victim had refused for her medical examination. Offence committed by the applicant is very serious and heinous in nature, and therefore applicant is not entitled for anticipatory bail.

6. I have considered the rival submissions made by the learned counsel for the parties.

7. In this matter, from perusal of record it reveals that prima facie there is no evidence regarding attempt of rape with the victim except her statement. Charge-sheet in this matter has been submitted. The applicant was not required to be arrested by the Investigating Officer during investigation. Now no custodial interrogation is required.

8. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that 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.

9. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87CrPC that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

12. Insofar as the present case is concerned and the general principles under Section 170CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

10. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till the end of trial.

11. The application is **allowed** accordingly.

12. In the event of arrest of the applicant, he shall be released on anticipatory bail on his 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 himself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(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 office.

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

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

Order Date :- 7.12.2023

Vibha