

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13303 of 2023

Applicant :- Gyanchandra @ Lole

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

Counsel for Applicant :- Vishnu Murti Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Sri V.K.S. Parmar, learned A.G.A. has informed that the notice to the informant has been served on 23.11.2023.
3. Heard Sri Vishnu Murti Tripathi, learned counsel for the applicant and learned A.G.A. for the State as well as perused the record.
4. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.78 of 2023, registered under Sections 363, 366 and 376(3) IPC and Section 3/4 The Protection of Children From Sexual Offences Act (POCSO Act) at Police Station- Pipari, District Kaushambi with a prayer to enlarge him on anticipatory bail.
5. As per prosecution story, the applicant is stated to have enticed away the minor daughter of the informant on 25.03.2023 at about 4:00 p.m.
6. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. The FIR is delayed by more than one day and there is no explanation of the said delay caused. The victim is a consenting party. To buttress his arguments, learned counsel has placed much reliance on the statement of the victim recorded under Section 164 Cr.P.C., whereby she has categorically stated that she had gone with the applicant out of her own sweet will and was in love with him and had married him in a temple and she wants to live with the applicant.
7. Learned counsel for the applicant has further stated that the instant FIR is just misuse of POCSO laws. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication

of the applicant have also been touched upon at length. There are no criminal antecedents of the applicant. The applicant has apprehension of his arrest. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

8. Per contra, learned A.G.A. has vehemently opposed the anticipatory on the ground that as per ossification test report, the age of the victim has been found to be below 17 years, as such she is below the age of consent and the applicant is not entitled for anticipatory bail.

9. In rebuttal, learned counsel has stated that a leverage of two years may be granted to the applicant on the upper side and has placed much reliance on the judgments of the Apex Court passed in *Jaya Mala vs. State of J & K, (1982) 2 SCC 538* and *Mohd. Imran Khan vs. State (Govt. of NCT of Delhi), (2011) 10 SCC 192*, whereby it has been opined that the radiologist cannot predict the correct date of birth rather there is a long margin of 1 to 2 years on either side.

10. POCSO was formulated to protect children under the age of 18 years from sexual exploitation. Nowadays, more often than not it has become a tool for their exploitation. The Act was never meant to criminalise consensual romantic relationships between adolescents. However, this has to be seen from the facts and circumstances of each case.

'The factum of consensual relationship borne out of love should be of consideration while granting bail because it would amount to perversity of justice if the statement of victim was ignored and accused was left to suffer behind jail'.

11. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A., taking into consideration the fact that the instant case seems to be the misuse of POCSO laws and considering the nature of accusations and antecedents of the applicant, the applicant is 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 applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

12. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Gyanchandra @ Lole** be released forthwith in the aforesaid case crime (supra)

on anticipatory bail till the conclusion of trial on furnishing a personal and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii). that 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;
- (iii). that the applicant shall not leave India without the previous permission of the court;
- (iv). that in case charge-sheet is submitted the applicant shall not tamper with the evidence during the trial;
- (v). that the applicant shall not pressurize/ intimidate the prosecution witness;
- (vi). that the applicant 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 concerned shall have the liberty to cancel the bail.

13. 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 :- 02.12.2023
Ravi Kant

(Krishan Pahal, J.)