Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 13132 of 2023

Applicant :- Himanshu Tyagi
Opposite Party :- State of U.P.
Counsel for Applicant :- Veerendra Singh,Neeja Srivastava,Sr. Advocate
Counsel for Opposite Party :- G.A.,Santosh Singh

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the material available on record.

2. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant -**Himanshu Tyagi** in Case Crime No.279 of 2023, under Sections 376, 506 IPC & Section 3/4 D.P. Act, Police Station - Civil Lines, District - Meerut.

3. It is alleged in the F.I.R. that the marriage between the prosecutrix and the present applicant was settled and ring ceremony was also performed and gifts were exchanged between them but subsequently, a demand of heavy dowry was made by the present applicant and his family members. When the family of the prosecutrix expressed its inability to pay the same, the accused persons refused to marry with the victim of the case. During this period, physical relations developed between the victim and the present applicant but subsequently when he refused to marry with the prosecutrix, an F.I.R. was lodged on 14.09.2023 and investigation started, which is still going on.

4. It has been 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. Investigation is going on in the matter. 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 the present case is not a case of rape or forcible physical relations at all. It is next submitted that the

victim of this case is a mature and major lady and they had been under consensual physical relations. It is next submitted that the prosecutrix happens to be a sports player and she was insisting to have a new flat and to live separately from the joint family of the applicant. However, even on pursuation of the applicant and his family members, she was not ready to leave her ingenuine demand and that is why their marriage was broken. It is next submitted that there are material contradictions in the statements of the prosecutrix under Sections 161 & 164 Cr.P.C. It is further submitted that the relations between the victim and the applicant were purely consensual and no physical relation was made by the present applicant with the victim of this case against her free will or without her consent. It is next submitted that the medical report does not corroborate the prosecution version. It is next submitted that the applicant is cooperating 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 on the false pretext of marriage, the present applicant only to fulfil his lust, developed physical relations forcefully with the victim of the case but subsequently, he refused to marry with her. It is further submitted that the medical report corroborates the prosecution version and the victim in her statement under Sections 161 & 164 Cr.P.C. has also corroborated the F.I.R. version.

7. Admittedly, the relationship between the parties are purely consensual and that is why, prima faice, crucial ingredients of offence of rape are not founded. The major victim and the applicant had been living in live-in relationship for a period of more than three years. Albeit a sexual relationship between the two adult unmarried persons is not a crime in the eyes of law but so far as the live-in relationship is concerned it is considered that it is made by the parties only to fulfill their physical requirements and also for the feeling of togetherness for some time but no promise to marry exists in such relationship. As the Court feels, such relations are made and developed to avoid the institution of marriage and if the lady victim has been living with the applicant for over a period of three years out of her own free will and consent, she may not be permitted to make a complaint that she had been physically exploited by the applicant in order to fulfill his lust. Reliance has been placed upon the cases of ***Shambhu Karwar Vs. State of U.P. and another, AIR 2022 Supreme Court 3901, Pramod Suryabhan Pawar Vs. State of Maharashtra and***

another, 2019 9 SCC 608 & Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and another, (2021) 0 Supreme (SC) 182, wherein the matter was related to consensual relationship between two major persons of opposite sex and benefit was given to the main accused and another law laid down in the case of ***Ansaar Mohammad Vs. State of Rajasthan and another 2022 SCC Online SC 886*** wherein almost in similar matter, anticipatory bail was granted to the accused applicant by the Hon'ble Apex Court.

8. *In* **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, *the Hon'ble Apex Court has 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, llikelihood 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* **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, *the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.*

10. Considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till filing of police report under Section 173(2) Cr.P.C. in the matter.

11. The application is **allowed**.

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 Station House Officer of the police station concerned with the

following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(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 Investigating Officer shall be at liberty to file appropriate application for cancellation of interim protection granted to the applicant.

Order Date :- 29.11.2023
Shivangi

Digitally signed by :-
SHIVANGI YADAV
High Court of Judicature at Allahabad