

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13103 of 2023

Applicant :- Dhir Singh

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Ajeet Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Ajeet Kumar Srivastava, learned counsel for the applicant and Sri Sunil Kumar, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.21 of 2016, registered under Section 376D IPC at Police Station- Sahaswan, District Badaun with a prayer to enlarge him on anticipatory bail.
4. As per prosecution story, the applicant and the daughter of the informant are stated to have inimical to each other as such litigations are pending against them. On 22.01.2016 at about 5:00 p.m., the applicant and other co-accused persons are stated to have abducted the daughter of the informant forcibly in the presence of the informant.
5. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. The FIR has been instituted just out of vengeance. The medical report indicates that the injuries are simple in nature. Initially, the FIR was instituted under Section 366 I.P.C. only, but later on the allegations of gang rape have been levelled against the applicant and other co-accused persons.
6. Learned counsel for the applicant has stated that the applicant was enlarged on regular bail by the Sessions Judge, Badaun vide order dated 11.02.2016 passed in Bail Application No.354 of 2016, under Section 366 I.P.C., as such the applicant is also entitled for anticipatory bail in the added section. The applicant has not misused the opportunity granted earlier on and is ready to cooperate during trial.
7. Learned counsel for the applicant has further stated that the allegations of sexual assault do not stand corroborated. 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 except the cases between the parties. 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. Learned counsel for the applicant has placed much reliance on the judgments of the Apex Court passed in case of **Bhadresh Bipinbhai Sheth vs. State of Gujarat & Another** reported in **2016 (1) SCC (Cri) 240** and **Manoj Suresh Jadhav & Ors. vs. The State of Maharashtra**, reported in **2018 SCC OnLine SC 3428**, wherein the applicant therein was enlarged on anticipatory bail in the added sections U/S 438 Cr.P.C. after being enlarged on regular bail U/S 439 Cr.P.C.

9. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application but unable to dispute the submissions raised by the learned counsel for the applicant.

10. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. 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.

11. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Dhir Singh** 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.

12. 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 :- 29.11.2023

Ravi Kant

(Krishan Pahal, J.)