

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13111 of 2023

Applicant :- Rohdas @ Rohitash

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Ram Shiromani Yadav

Counsel for Opposite Party :- G.A.,Manoj Pandey

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Ram Shiromani Yadav, learned counsel for the applicant, Sri Manoj Pandey, learned counsel for the complainant and Sri R.M. Yadav, 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 Complaint Case No.473 of 2022 registered under Sections 376/511, 323, 504 and 506 IPC at Police Station- Baniyather, District Sambhal with a prayer to enlarge him on anticipatory bail.
4. As per prosecution story, the co-accused persons, namely, Parsadi, Nanhe @ Netrapal and Santoshi, are stated to have assaulted the complainant about five months before the present incident and an NCR was instituted which was converted into FIR No.57 of 2022, under Sections 325, 323 and 504 I.P.C., P.S. Baniyather, District Sambhal. The applicant and other co-accused persons are stated to have pressurized her and the co-accused persons are stated to have even assaulted her on 25.03.2020 to get the said matter compromised. After that, on 16.05.2022 at about 10:00 p.m., the applicant is stated to have barged into the house of the complainant and committed rape with her by gagging her mouth.
5. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. The present complaint case has been filed after a delay of nine days and there is no explanation of the said delay caused. There is no injury report to corroborate the prosecution story. The present complaint case is a counterblast to the complaint case filed by the co-accused persons against the complainant and her family members as Complaint Case No.224 of 2022, in which the applicant was an eye-witness.

6. Learned counsel for the applicant has further stated that the present complaint case has just been instituted to coerce the applicant into compromise and refrain from deposing against the family members of the complainant herein. The applicant was not named in the earlier FIR No.57 of 2022. Learned counsel has further stated that a report was fetched from the police station which categorically indicated the pendency of the said FIR No.57 of 2022 and has stated that the instant complaint is fake.

7. 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 counsel for the complainant and learned A.G.A. have vehemently opposed the anticipatory bail application on the ground that the said complaint case was also a counterblast to the said NCR filed by the complainant and the said prosecution is just misuse of process of Court. The applicant has committed the said offence.

9. 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 applicant was not named in the earlier FIR and there is no injury sustained by the injured person coupled with the fact that the applicant has no criminal antecedents, 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.

10. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Rohdas @ Rohitash** be released forthwith in the aforesaid complaint case (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 the applicant shall not pressurize/ intimidate the prosecution witness;
- (v). that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
- (vi). that in case of breach of any of the above conditions the court concerned shall have the liberty to cancel the bail.

11. 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 :- 07.12.2023
Ravi Kant

(Krishan Pahal, J.)