

Court No. - 72

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13543 of 2023**

Applicant :- Ankit

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

Counsel for Applicant :- Ashwani Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Mukesh Kumar Pandey, Advocate holding brief of Sri Ashwani Kumar Pandey, learned counsel for the applicant, Sri D.K. Nirankari, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.443 of 2023, under Sections 363, 366, 376 I.P.C. and 3/4 POCSO Act, Police Station Soraon, District Prayagraj, during the pendency of trial.
4. As per prosecution story, the applicant in collusion with co-accused person Deepak is stated to have enticed away the minor niece of the informant on 2.8.2023. After frantic search, she could be found in objectionable circumstances at Mau Aima crossing, Prayagraj, as such the FIR was instituted against the applicant and co-accused person Deepak on 5.8.2023.
5. Learned counsel for the applicant has submitted that he has been falsely implicated in the present case. The FIR is delayed by about three days and there is no explanation of the said delay caused. Learned counsel has stated that the victim is a consenting party as is evident from her statement recorded under Section 164 Cr.P.C., whereby she has stated that she knew the applicant and was in constant touch with him over mobile phone, as such she was sent to her maternal grandmother, where the applicant had come alongwith co-accused person Deepak and taken her away to hotel and had raped her. Learned counsel has stated that the said allegations of rape are false as they have not been corroborated by medical evidence. Learned counsel has further stated that as per ossification test report, age of the victim is found between 16-17 years, although her date of birth in the school certificate is

mentioned to be 20.9.2008 which falls a bit below 15 years.

6. Learned counsel for the applicant has placed much reliance on the judgment of Apex Court in ***Sushil Kumar vs. Rakesh Kumar***, (2003) 8 SCC 673, wherein it has been stated that it is more often in the Indian Society that person shows the age of their wards much below than their actual age. In the case of ***Brij Mohan Singh vs. Priya Brat Narain Sinha***, AIR 1965 SC 282, this Court, inter alia, observed that in actual life it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed. It is also settled by Apex Court that as per the medical records, a leverage of two years may be granted to the accused person. It is further stated that the applicant has no criminal antecedent to his credit.

7. Per contra, learned counsel for the informant and learned AGA have vehemently opposed the anticipatory bail application on the ground that the arguments tendered at Bar pertain to regular bail which cannot be agitated under the provisions of Section 438 Cr.P.C. Learned counsel has further stated that age of the victim is below 15 years and the ossification test report also indicates it to be between 16-17 years which cannot be sure regarding the exact age of the victim and why the leverage of two years may not be granted on the lower side in the case of applicant.

8. After hearing learned counsel for the parties as well as learned A.G.A. and taking into consideration the age of the victim as per the school certificate and also that the arguments tendered at Bar pertain to regular bail, I do not find it a fit case for grant of anticipatory bail to the applicant.

9. The present anticipatory bail application is hereby found devoid of merits and is accordingly **rejected**.

10. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 8.12.2023

Vikas

[Krishan Pahal, J.]