

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13707 of 2023

Applicant :- Lal Chand

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

Counsel for Applicant :- Ravindra Prakash Srivastava, Vikash Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned counsel for the informant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant **Lal Chand** seeking anticipatory bail in Case Crime No. 145 of 2023, under Sections 363, 366, 376 (3) IPC and 3/4 POCSO Act, Police Station- Lotan, District- Siddharth Nagar.
3. The minor daughter of the victim was enticed away by the present applicant and when she was not traced FIR was lodged on 6.1.2023 under Section 363 and 366 I.P.C. and investigation started, which is going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It is further submitted that the present applicant has given his field to the informant for agriculture but due to some altercation he was falsely implicated by the informant in this case. There is no independent witness of the incident of kidnapping. The victim of this case is major and the applicant never enticed her away. It is further submitted that during investigation he has been cooperative so far and he is having no criminal history to his credit. It is further submitted that in her statement under Section 161 Cr.P.C. the prosecutrix has made no statement regarding the physical exploitation by the present applicant and she has stated that she herself left her house and went to Nepal with the present applicant. It is further submitted that the medical report does not corroborate the prosecution version. It is also submitted that in her statement

under Section 164 Cr.P.C. she had clearly stated that she had in love with the present applicant. It is also submitted that the informant of this case has given an affidavit that the present FIR was lodged due to some misunderstanding and her daughter, the victim, was major at the date of incident and her date of birth is 1.2.2004. It is lastly submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It is vehemently submitted that the victim was medically examined when she was recovered and it was found that her age is around about 17 years and, as such, she is not a major girl. It is further submitted that the victim in her statement under Section 161 and 164 Cr.P.C. has narrated against the present applicant and in her statement under Section 164 Cr.P.C. She had categorically stated that the present applicant made physical relations with her against her will forcibly. She had also stated that when she was enticed away by the present applicant she went with him to Nepal from her school. It is further submitted that it is a case of rape and sexual assault committed to a minor girl. It is also submitted that the so called affidavit given by the informant in favour of the applicant is not the part of the case diary. The offence is very serious and the applicant is not entitled for anticipatory bail.

6. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled 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, likelihood 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.

7. Hence, 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, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

8. The anticipatory bail application is **rejected**.

Order Date :- 12.12.2023

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