

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438

CR.P.C. No. - 2277 of 2023

Applicant :- Ashish Kumar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Home Sectt. Lucknow

Counsel for Applicant :- Niteesh Kumar, Himanshu Suryavanshi

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Himanshu Suryavanshi, the learned counsel for the applicant as well as Sri Jayant Singh Tomar, learned A.G.A-I appearing on behalf of the State and perused the records.

2. The instant application has been filed by the applicant seeking anticipatory bail in F.I.R. bearing Case Crime No. 212 of 2022, under Sections 493, 506, 406, 376 I.P.C. and Section 3/4 Dowry Prohibition Act, registered at Police Station Kotwali Nagar, District Barabanki.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 03.03.2022 against the applicant, her mother and sister-in-law, in furtherance of an application under Section 156(3) Cr.P.C filed on 01.02.2022, alleging that the informant's father had settled her marriage with the applicant about two years ago and the applicant had said that he would marry the informant after the marriage of his sister. Since then, the applicant used to frequently visit the informant's home and make physical relations with her under allurement of marrying her. On 23.03.2021, the informant's father had paid Rs. 1,10,000/- to the applicant as he had demanded the money for his sister's wedding. Some other amounts are also said to have been paid but ultimately the accused persons demanded dowry and on refusal, they declined to marry the informant on 08.09.2021.

4. In the affidavit filed in support of the anticipatory bail application it has been contended that the applicant is innocent, he has falsely been implicated in the present case and he has no criminal history.

5. The learned counsel for the applicant has submitted that no F.I.R can be filed for a commission of offence under Section 493 I.P.C as Section 198 Cr.P.C provides that cognizance of commission of such an offence can only be taken upon a complaint filed by the victim.

6. Although the F.I.R does not mention commission of offence under Section 376 I.P.C, the said section has been added after investigation.

7. A copy of the order dated 24.08.2023 passed by this Court in Criminal Misc. Writ Petition No. 5833 of 2022 filed by the applicant has been annexed with the affidavit filed in support of the anticipatory bail application, whereby the applicant's arrest was stayed till filing of the police report under Section 173(2) Cr.P.C after taking into the judgment of the Hon'ble Supreme Court in the case of Deepak Gulati Vs. State of Haryana 213 7 SCC 675.

8. The learned A.G.A. has opposed the prayer for bail but he could not dispute the aforesaid aspects of the matter.

9. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the informant is not a minor and she is expected to understand the repercussion of her acts of making physical relations with the applicant prior to her marriage with him; that the informant has not filed any complaint under Section 493 Cr.P.C; that there is nothing which may prima facie established that the intention of the applicant was to deceive the informant since inception and that the applicant has no criminal history and without making any observations which may affect the outcome of the case, I am of the view that the aforesaid facts are sufficient for making out a case for granting anticipatory bail to the applicant.

10. In view of the above, the anticipatory bail application of the applicants is **allowed**. In the event of arrest/ appearance of applicant- **Ashish Kumar** before the learned Trial Court in the aforesaid case crime, he shall be released on anticipatory bail on his furnishing personal bond and two solvent sureties, each in the like amount, to the satisfaction of S.H.O./Court concerned on the

following conditions and subject to any other conditions that may be fixed by the Trial Court:

(i). That the applicant shall appear before the trial court on each date fixed, unless personal presence is exempted;

(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 pressurize/ intimidate the prosecution witness;

11. In default of any of the conditions mentioned above or it is found that applicant has obtained this order concealing any material facts, the Investigating Officer shall be at liberty to file appropriate application for vacation of this order.

(Subhash Vidyarthi, J.)

Order Date :- 18.10.2023

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