

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2710 of 2023

Applicant :- Sushil Kumar Dixit

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Home
Govt. Lko. And 3 Others

Counsel for Applicant :- Atul Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Atul Kumar Singh Parmar, the learned counsel for the applicant as well as Sri Rakesh Kumar Singh, the learned Additional Government Advocate 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. 53 of 2017, under Sections 376 IPC & 3/4 POCSO Act, 3 (2) V, 3 (1) (ba) (i) SC/ST Act, Police Station Behta Gokul, District Hardoi.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 10.04.2017 against four persons, not including the applicant, alleging that one of the named accused persons had enticed away the informant's daughter on 21.03.2017.
4. In the statement of the victim recorded under Section 161 Cr.P.C., she did not name the applicant. The statement of the victim recorded under Section 164 Cr.P.C. is at variance with her earlier version wherein she implicated one Sunil whereas the applicant's name is Sushil and she alleged commission of rape by Awadhesh and Sunil.
5. In the affidavit filed in support of the application it has been contended that the applicant is innocent, he has falsely been implicated in the present case and that he has no criminal history.
6. A supplementary affidavit has been filed on behalf of the applicant annexing therewith a copy of the medico legal examination report of the victim, wherein no adverse findings have been recorded. Pathological examination report of the victim annexed with the affidavit mentions absence of spermatozoa. As per the radiological examination report, the

victim is aged about 17 years.

7. The applicant's name was not included in the charge sheet and he has been summoned to face the trial under Section 319 Cr.P.C.

8. Learned counsel for the applicant has submitted that the applicant is willing to cooperate with the trial.

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

7. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the incident occurred on 21.03.2017, the FIR was lodged on 10.04.2017 and the applicant is not named in the FIR; that the applicant was not named even in the statement of the victim recorded under Section 161 Cr.P.C.; that the additional person implicated in the statement recorded under Section 164 Cr.P.C. was Sunil whereas the prosecution now claims that Sunil and Sushil (the applicant) are the same persons; the allegations against the applicant could not be established during investigation and his name was not included in the charge sheet and that the applicant has no previous criminal history and he has expressed willingness to cooperate with the trial 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 during pendency of the trial.

8. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of applicant-**Sushil Kumar Dixit** before the learned Trial Court in the aforesaid case crime, he shall be released on anticipatory bail during pendency of the trial 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.

Order Date :- 29.11.2023

Pradeep/-