

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL

APPLICATION U/S 438 CR.P.C. No. - 2568 of 2023

Applicant :- Manoj Kumar Yadav

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.
Lucknow And Another

Counsel for Applicant :- Amit Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Amit Pandey, the learned counsel for the applicant, Sri Anurag Verma, learned A.G.A-I appearing on behalf of the State as well as Sri Gyan Prakash and Ms. Neha Gupta, learned counsel for the informant 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. 044 of 2023, under Sections 376(2)(N), 323, 504, 506 I.P.C. and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Mill Area, District Raebareli.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 27.09.2022 against the applicant, his father and mother, alleging that the informant came into contact with the applicant while pursuing B.Tech. Course between the year 2009-10, whereas the applicant was also a student. Under allurement of marrying the informant, the applicant repeatedly made physical relations with her till November, 2021. On various occasions, the applicant had beaten up the informant. Till August, 2022, the applicant used to talk to the informant through mobile phone and promised to marry her but thereafter he declined to marry her and block communication with her.

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 informant has stated that the accused persons had filed an Application u/s 482 No. 9253 of 2023, which was disposed off by means of an order dated 25.09.2023 providing that if the applicants surrender and apply for bail, their bail applications shall be considered and decided in accordance with law. She further stated that the young woman has been ravished and the trust and faith which she had reposed in the applicant has been violated.

6. The learned A.G.A-I has opposed the bail application and he has submitted that the informant has lodged an F.I.R after suffering ill treatment on the hands of the applicant for more than a decade. He has further submitted as the present case involved allegation of commission of offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The anticipatory bail is barred by the provision contained in Section 18 of the aforesaid act.

7. The Session Court had rejected the anticipatory bail on the ground that the allegation involved commission of offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The informant's allegation is that the applicant had said to her during a mobile conversation that since she belongs to a Scheduled caste, he would not marry her. The aforesaid statement was not made publicly and it was not made abusively and the making of such a statement prima facie does not amount to commission of an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In **Prithivi Raj Chauhan Vs. Union Of India and others: (2020)**

4 SCC 72, the Supreme Court had held that:-

"11. Concerning the applicability of provisions of Section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions."

8. The allegation in the F.I.R is that the applicant said during a telephonic conversation that he would not marry the informant, as she belongs to a scheduled caste. Therefore, in view of the peculiar facts of the present case, the bar contained in Section 18 of Scheduled Castes and Scheduled Tribes Act, will not apply in the present case.

9. The applicant has been charged with commission of offence under Section 3(2)(V) which provides that whoever, not being a member of Schedules castes or Scheduled Tribes, commits any offence under Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such a person is a member of Schedules castes or Scheduled Tribes or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

10. What prima facie appears is that the applicant has not committed any offence, there is no question of an enhanced punishment being inflicted upon him for commission of an offence under I.P.C. Moreover, Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, does not contain a provision regarding commission of an offence under the Scheduled Castes and Scheduled Tribes Act and it merely provides that infliction of enhanced punishment

for offences under the I.P.C committed against any person belonging to Scheduled Castes.

11. So far as the objections raised by the learned counsel for the informant, that the application under Section 482 Cr.P.C has been rejected, suffice it to say that in **Kamlesh and another versus State of Rajasthan and another, 2019 SCC OnLine SC 1822**, the High Court of Rajasthan had rejected the application for anticipatory bail only on the ground that petition under Section 482 Cr.P.C., praying for quashing of FIR, had already been rejected. The Hon'ble Supreme Court allowed the appeal filed against the order of the High Court by holding that:

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"5. We are of the view that the order of the High Court cannot be sustained. High Court ought to have considered the application on merits. The fact that petition under Section 482 Cr.P.C. was dismissed for quashing was not conclusive and could not be the reason for rejecting the application."

12. Having considered the aforesaid facts and circumstances of the case, what prima facie it appears that the applicant and the informant were in a relationship since the year 2009, while the informant and the applicant both were pursuing B.Tech. Course. The relationship continued till the year 2022. The F.I.R has been lodged after the applicant declined to marry the informant. There is no material on the basis whereof the court may prima facie come to a conclusion that the intention of the applicant was to deceive the informant since inception. The informant having secured admission and persuaded graduation in Engineering, would be assumed to understand the repercussions of her action. 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.

13. In view of the above, the anticipatory bail application of the applicant is ***allowed***. In the event of arrest/ appearance of applicant- **Manoj Kumar Yadav** 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;

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(Subhash Vidyarthi, J.)

Order Date :- 8.11.2023

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