

**Court No. - 16**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438  
CR.P.C. No. - 2639 of 2023

**Applicant :-** Mulukraj

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

**Counsel for Applicant :-** Anand Kumar Srivastava, Vivek Kumar Srivastava

**Counsel for Opposite Party :-** G.A.

**Hon'ble Subhash Vidyarthi, J.**

1. Heard Sri Anand Kumar Srivastava the learned counsel for the applicant as well as Sri Anurag Verma, 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. 826 of 2016, under Sections 363, 366, 376-D I.P.C., registered at Police Station Kotwali Dehat, District Balrampur.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 13.07.2016 against three persons, including the applicant, alleging that a litigation was going on between the parties and upon persuasion of certain villagers a compromise was entered into between them. The accused persons were annoyed with this and they used to abuse and threaten the informant that they would kidnap his daughter. The accused persons enticed away the informant's daughter aged about 17 years in the night of 11.07.2016
4. In the statement of the victim recorded under Section 161 Cr.P.C., she stated that she is aged 16 years; that the accused persons had forcibly taken her away from her home in the night of Saturday, which was on 09.07.2016; they kept her in a sugarcane field for three days and she was intoxicated and raped repetitively for four days. When she was returning home after regaining consciousness on 13.07.2016, her father met her on the way and thereafter she went to the police station.
5. In the statement of the victim recorded under Section 164 Cr.P.C., she stated

that there is no animosity with the accused persons but the applicant and co-accused Pooja Ram had committed the misdeed against her at an earlier occasion also.

6. During the medico legal examination of the victim, no mark of any injury or sign of use of force was found on any part of her body. As per pathological examination report of vaginal smear, no spermatozoa was found. The victim's age has been opined to be above 18 years as per her radio logical examination. After the victim was found to be major, the Section 3 and 4 of Protection of Children from Sexual Offences Act was deleted by the Investigating Officer and a charge sheet has been submitted under Sections 363, 366 and 376-D I.P.C only.

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

8. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that there is an old animosity between the parties and on a previous occasion also, an F.I.R was lodged against the applicant and co-accused Pooja Ram on similar allegations and the applicant was acquitted by means of a judgment and order dated 31.03.2016 passed by the Additional Session Judge, Court No. 1, Balrampur in Session Trial No. 19/2015; that the allegations levelled in the F.I.R are not supported by the findings of the medico legal examination report of the victim; that there is a discrepancy regarding date of incident in the allegations levelled in the F.I.R and the statement of the victim 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.

9. In view of the above, the anticipatory bail application of the applicants is **allowed**. In the event of arrest/ appearance of applicant- **Mulukraj** 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;

**(Subhash Vidyarthi, J.)**

**Order Date :- 17.11.2023**

Preeti.