

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2670 of 2023

Applicant :- Amber Chauhan Alias Amer Singh

Opposite Party :- State Of U.P. Thru. Secy. Home Civil Sectt. Lko And 3
Others

Counsel for Applicant :- Shivendra Pratap Singh, Arvind Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Arvind Kumar, the learned counsel for the applicant, Sri Anant Pratap Singh, learned A.G.A. appearing on behalf of the State and as well as Rajan Mishra, 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. 460 of 2023, under Sections 376, 323, 504, 506, 308, 395, 34 I.P.C. and Section 7/8 of Protection of Children from Sexual Offences, registered at Police Station Fatehpur, District Barabanki.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 31.07.2023 against 8 persons, including the applicant, alleging that while the informant's daughter was passing from the front of the informant's house at about 04:00 pm, the applicant stopped her and started doing obscene activities. She ran towards the home and after reaching home told about the incident to the informant's son. The accused persons came to the informant's house, hurled abuses, beaten up the informant's son and dragged him to their home. They snatched away a gold chain and a bangle from the informant's son.
4. In the affidavit filed in support of the anticipatory bail application it has been contended that the applicant is innocent and he has falsely been implicated in the present case. Earlier also, an F.I.R No. 246 of 2021 was lodged on 23.06.2021 against five persons, including the applicant, leveling similar allegations. In view of the case, the applicant has been granted anticipatory bail by means of an order dated 18.10.2023 passed by the Session Court.

5. A supplementary affidavit has been filed by the applicant, stating that a whatsapp message is being circulated amongst Advocates of District Barabanki stating that the informant is an Advocate and no Advocate should accept the brief of the applicant. It has further been stated that the applicant had submitted an application for surrender before the trial court on 22.09.2023 and in the report submitted by the police on the aforesaid application, it has been mentioned that the applicant has been made an accused of commission of offences under Sections 376, 342, 323, 504, 506 I.P.C. and Section 7/8 of Protection of Children from Sexual Offences, whereas the F.I.R alleged commission of offence under Section 307 I.P.C also and it did not alleged commission of offence under Section 376 I.P.C.

6. The informant has filed a counter affidavit *inter alia* stating that the allegation of commission of rape has been supported by an independent witness Chhote. Chhote has stated that the applicant had taken a girl inside his home by catching hold of her hand. He did not allege use of force by the applicant. He further stated that subsequently he came to know that the applicant had committed the misdeed with the girl.

7. The learned counsel for the informant has submitted that proceedings under Section 82 Cr.P.C have been initiated against the applicant. In case of **Lavesh Vs. State (NCT of Delhi)**, the Hon'ble Supreme Court has held that "*normally, when the accused is "absconding" and declared as a "proclaimed" offender, there is no question of granting anticipatory bail to such an accused person*" and, therefore, the applicant is not entitled to be granted anticipatory bail. He also relied upon a judgment dated 08.02.2023 rendered by a coordinate bench of this court in Criminal Misc. Anticipatory Bail Application No. 293/223 wherein this court expressed its opinion that once the accused applicant has put in appearance through counsel before the trial court, the anticipatory bail application is not maintainable.

8. The learned A.G.A. has also opposed the prayer the anticipatory bail but as per instructions received by him the allegation of commission of rape is not supported by the medico legal examination report of the victim. He also

submitted that proceedings under Section 82 Cr.P.C. have been initiated against the applicant. Section 82 Cr.P.C provides as follows:-

"82. Proclamation for person absconding.-(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that warrant cannot be executed, such Court may publish, a written proclamation requiring him to appear at a specified place and at a specifies not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382,

392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and a declaration to that effect.

5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).

Although, the learned counsel for the informant and the learned A.G.A have stated that proceedings a proclamation under Section 82 Cr.P.C has been issued against the applicant, they have not stated that the proclamation issued under sub-section (1) of Section 82 Cr.P.C has been published in the manner prescribed under sub Section (2) of Section 82 Cr.P.C.

9. In Lavesch (supra), the Hon'ble Supreme Court has held that normally anticipatory bail should not be granted by a person who is absconding and has been declared as a proclaimed offender and issuance of a declaration of a proclaimed offender is provided in sub-section (4) of Section 82 Cr.P.C. Therefore, in absence of a proclamation issued under Section 82(1) Cr.P.C having been published in the manner prescribed under Section 82(2) Cr.P.C., the proclamation would not be complete. Moreover, a person who has been "*declared a proclaimed offender*" is a person against whom a declaration of being a proclaimed offender has been issued under sub-section (4) of Section 82 Cr.P.C. In the present case, there is nothing on record to indicate that the applicant has been declared to be a proclaimed offender. Therefore, there appears to be no bar against consideration of the application for anticipatory bail filed by the applicant.

10. What prima facie appears from the material placed before this court at this stage is that similar allegations were levelled against the applicant and four other members of his family members on 23.06.2021 also and the applicant has been granted anticipatory bail in that case. The F.I.R lodged on 31.07.2023 alleges

that the applicant did obscene activities against the daughter of the informant's brother-in-law in front of his house, she ran towards her house and told about the incident to the family members. The allegation of rape is not there even in the statement of the victim recorded under Section 161 Cr.P.C. Subsequently it has been alleged that she was raped by the applicant. A witness has merely stated that he had seen that the applicant was taking her inside his house by catching hold of her hand and no use of force by the applicant has been alleged even by that witness. The allegation of a rape is not supported by any medico legal examination report. The applicant had given an application for surrendering before the trial court and thereafter it came to light that he has been made an accused of commission of rape also, which allegation was not known to the applicant till submitting an application for his surrender. Prima facie the aforesaid conduct of the applicant indicates that he is not absconding from the process of law and he is willing to cooperate with the trial.

11. In view of the aforesaid discussion, I am of the view that the applicant is entitled to be granted anticipatory bail.

12. In view of the above, the anticipatory bail application of the applicants is **allowed**. In the event of arrest/ appearance of applicant- **Amber Chauhan Alias Amer Singh** 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 :- 28.11.2023

Preeti.