

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2709 of 2023

Applicant :- Mo. Shakir Khan Alias Shakir Alias Teni

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

Counsel for Applicant :- Pravin Kumar Singh, Anupama Bhadauria

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Ms Anupama Bhadauria, the learned counsel for the applicant as well as Sri Akhilesh Kumar Vyas, 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.165 of 2020, under Sections 363, 506, 376 I.P.C., 3/4 POCSO Act, registered at Police Station Dhanepur, District Gonda.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 19.06.2020 against four persons, including the applicant, stating that co-accused Faiyaj enticed away informant's daughter aged about 16 years, with the assistance of other co-accused persons.

4. In the statement of the victim recorded under Section 161 Cr.P.C. she stated that she was aged about 17 years, she used to talk to co-accused Saddam. Co-accused Saddam has forcibly took her away in a motorcycle, kept her in a room for 8-9 days and committed the misdeed against her.

5. In the statement recorded under Section 164 Cr.P.C. the victim stated that accused persons Saddam, Faizan used to make phone calls to her about a month ago, the applicant has sent a mobile phone through her cousin. he kept the mobile phone with her. All the three persons used to express their love towards the victim. They used to

call her and the victim used to go to meet them. She alleged that the 3 persons had forcibly taken her away and raped her repetitively for 8 days.

6. Medico legal examination report of the victim does not mention any finding regarding any injury or sign of use of force.

7. Initially, the investigating officer had submitted a charge-sheet against the co-accused Saddam only. When the trial court has recorded the statement of the victim wherein she alleged commission of rape by all the three accused persons, thereafter the applicant has been summoned to face trial

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

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

10. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that in the statement of the victim recorded under Section 161 Cr.P.C., she had not level any allegation against the applicant; that initially, the investigating officer found that the allegation against the applicant could not be established and his name could not be included in the charge-sheet and that the applicant is a youngman having 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.

11. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of **applicant-Mo. Shakir Khan Alias Shakir Alias Teni** 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 :- 24.11.2023
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