

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2800 of 2023

Applicant :- Vimal Kumar Gautam

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

Counsel for Applicant :- Arvind Kumar Kanaujea

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Arvind Kumar Kanaujea, the learned counsel for the applicant as well as Sri Jayant Singh Tomar, the learned Additional Government Advocate-I appearing on behalf of the State and Sri Vijay Kumar Asthana, 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.524 of 2023, under Sections 376, 312, 323, 504, 506 I.P.C., registered at Police Station Gola, District Kheri.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 21.09.2023 against 5 persons, including the applicant, alleging that the applicant had clicked photographs of the informant while she was bathing and since then, he extracted Rs.50,000/- in cash and Rs.11,100/- through her Phone Pay account. The informant threatened the applicant that she would commit suicide whereupon the applicant returned her Rs.14,100/- on various dates. None of the dates of the aforesaid incident has been mentioned in the FIR. It is alleged that the applicant took the informant to a hospital at Lucknow on 09.1.2023 and forcibly committed the misdeed with her and again did the same at the informant's room at Noida on 06.05.2023, due to which she got pregnant. The informant further alleged commission of rape against the applicant in the night of 27.06.2023 at the residence

of the applicant's sister and he further states that the accused persons got her abortion carried out against her wishes.

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 and he has no criminal history excepted the FIR No.339 of 2023 lodged on 21.09.2023 at 23:03 Hours at Police Station Palia, Kheri which has been lodged by same informant against the same set of accused persons on the same set of allegations.

5. The applicant has assailed the validity of the FIR No.339 of 2023 by filing Criminal Misc Writ Petition No.8329 of 2023 and his arrest has been stayed by means of the order dated 28.10.2023 passed in the aforesaid case.

6. The learned A.G.A.-I and learned counsel for the informant have opposed the prayer for anticipatory bail and they have submitted that the allegations leveled against the applicant are serious in nature, which disentitle him to claim anticipatory bail. However, as per the instructions provided to him, learned A.G.A.-I has stated that no such photograph has been provided by the informant during investigation, which may support the allegations leveled in the FIR.

7. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the applicant has claimed to transfer Rs.11,100/- to the informant through online mode and as per herself, the applicant has refunded Rs.14,100/- through the online mode; that the allegations of blackmail on the strength of some obscene photograph could not be supported by providing any photograph to the investigating officer and that arrest of the applicant in another FIR lodged on the basis of same set of allegation has been stayed, 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.

8. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of **applicant-Vimal Kumar Gautam** 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 :- 7.12.2023
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