

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2817 of 2023

Applicant :- Mahendra Kumar

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

Counsel for Applicant :- Sushil Pandey, Akhil Anand

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Sushil Pandey, the learned counsel for the applicant as well as Sri Puneet Kumar Pandey, learned State Counsel 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. 176 of 2023, under Sections 354, 452, 323, 504, 506, 427 I.P.C. and Section 3(1)(w)(I) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and added Section 376 I.P.C, registered at Police Station Reusa, District Sitapur.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 07.05.2023 alleging that when the informant was alone at her home, the applicant entered there at about 05:00 pm on 28.04.2023, molested and attempted to commit the misdeed against her. When the informant raised a hue and cry, the applicant hurled abuses and assaulted him and attacked on her head with a knife. It is also alleged that the informant had damaged a motorcycle in the house.
4. The medico legal examination report of the victim mentions a lacerated wound of size 3.3.0 cm X 0.2 cm tissue deep, which injury has been opined to have been caused by a hard and blunt object and is simple in nature.
5. In the statement of the victim recorded under Section 161 Cr.P.C, she supported the F.I.R allegations, except for the allegation of the injury on head having been caused by a knife.
6. In the statement of the victim recorded under Section 164 Cr.P.C, she alleged

commission of rape by the applicant.

7. 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.

8. Initially, when the allegation of rape had not been levelled, the applicant had filed Criminal Misc. Writ Petition No. 3654 of 2023 challenging validity of the F.I.R, which was disposed off by means of an order dated 12.05.2023 by observing that the applicant is entitled to benefit of guidelines laid down by the Hon'ble Supreme Court in case of **Arnesh Kumar Vs. State of Bihar**, (2014) 8 SCC 273 and **Nikesh Taracharnd Shah Vs. Union of India**, (2018) 11 SCC 1.

9. After addition of Section 376 I.P.C, the applicant filed a Criminal Misc. Writ Petition No. 4901 of 2023, an interim order was passed on 26.06.2023 staying the petitioner's arrest till filling of the police report under Section 171(2) Cr.P.C. The applicant has filed the present application after submission of a charge sheet.

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

11. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the incident allegedly took place on 28.04.2023 and the F.I.R. has been lodged on 07.05.2023; although the victim herself is the informant, in which F.I.R. lodged after 10 days of the incident, she did not alleged commission of rape by the applicant and this allegation was not levelled even in the statement recorded under Section 161 Cr.P.C.; the informant has alleged causing injury on her head by the knife but the injury has been reported to be caused by hard and blunt object; the allegations do not prima facie make out a case of commission of offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and that the applicant has 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.

12. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest/ appearance of applicant- **Mahendra Kumar** 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 :- 8.12.2023

Preeti.