

Court No. - 16

Case :- CRIMINAL MISC. BAIL CANCELLATION
APPLICATION No. - 142 of 2023

Applicant :- Victim X Case Crime No. 409/ 2023 Thru. Her
Natural Guardian /Mother And Another

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

Counsel for Applicant :- Devendra Pratap Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Devendra Pratap Upadhyay, learned counsel for the applicants, learned A.G.A. for the State and perused the records.

2. This is an application seeking cancellation of anticipatory bail granted to the opposite party No.2 by means of the order dated 20.11.2023 passed by this Court in Criminal Misc. Anticipatory Bail Application U/S438 CR.P.C. No.-2653 of 2023.

2. The cancellation of the aforesaid bail has been sought on the ground that the order makes a mention of the statement of the victim recorded under Section 164 CrPC, wherein she had claimed her age to be of 19 years whereas the copy of the High School certificate of the victim mentions her date of birth to be 20.10.2007.

3. The anticipatory bail was not granted on the solitary reason of the age disclosed by the victim but the court had also taken into consideration her statement that her parents wanted to get her married to some person forcibly and due to this reason she had gone away with the applicant out of her own free will, she

had married the applicant and she wants to live with him alone.

4. In view of the aforesaid , there is no occasion for cancellation of the anticipatory bail granted to opposite party No.2 by means of the order dated 20.11.2023.

5. The learned counsel for the applicant has placed reliance on a judgment dated 17.03.2023 passed by the Hon'ble Supreme Court in **SLP (Criminal) No.11104-11105 of 2022, Ms. X vs. State of Maharashtra and another**, wherein the appellant/prosecutrix, who claims to have been exposed to the horrors of the notorious casting couch syndrome, at the hands of the respondent No.2/accused herein" had approached the Hon'ble Supreme Court seeking cancellation of anticipatory bail granted to the accused persons in an offence under Section 376 IPC. The accused in that case was granted bail by the Magistrate. Subsequently, the statement of the prosecutrix was recorded and she alleged commission of rape and thereafter Section 376 IPC was added and the police filed an application for cancellation of bail. The application was allowed and the Magistrate cancelled the bail granted to the accused person. After cancellation of the regular bail granted to the accused, he filed an application for anticipatory application. The prosecutrix filed an application for intervention but the application for anticipatory bail was allowed which reads as under:-

"Considering the improvement in the version of the prosecutrix and that too coming after a period of more than one month, the applicant was protected by the interim order and he was directed to the report to the investigating officer and accordingly, he has reported to the investigating officer, his medical is conducted and his mobile phone.

In the wake of the above, since the applicant has rendered his cooperation in the investigation, the order dated 29.09.2022 is made absolute."

6. The Hon'ble Supreme Court was deciding an appeal filed against the aforesaid order granting anticipatory bail to the accused person after rejection of anticipatory bail application.

7. In the aforesaid background, the Hon'ble Supreme Court noted the consideration that ought to govern grant of anticipatory bail in the following words:-

"There are a line of decisions of this court that have underscored the fact that while deciding an application for bail, the court ought to refrain from undertaking a detailed analysis of the evidence, the focus being on the prima facie issues including consideration of some reasonable grounds that would go to show if the accused has committed the offence or those facts that would reflect on the seriousness of the offence. The self-imposed restraint on delving deep into the analysis of the evidence at that stage is for valid reasons, namely, to prevent any prejudice to the case set up by the prosecution or the defence likely to be taken by the accused and to keep all aspects of the matter open till the trial is concluded."

8. The Hon'ble Supreme Court referred to the judgment of **Myakala Dharmarajam and Others v. State of Telangana and Another** reported in **2020 2 SCC 743**, wherein it was held that the Appellate Court or a superior Court can set aside an order granting bail if the concerned Court that granted bail, failed to consider the relevant factors. The Hon'ble Supreme Court held that the accused persons in that case had been granted bail without touching upon the relevant aspect of the case and he was granted anticipatory bail in a brief order, having been swayed by the star variation of the prosecutrix, implying thereby that what was originally recorded in the F.I.R., did not make out an offence of rape defined in Section 375 IPC, which is an erroneous assumption. Whereas, in that case, there was sufficient material in the FIR itself that would prima facie attract Section 376 IPC.

9. In the present case, the victim did not level any allegation against the applicant either before the Investigating Officer or before the Magistrate. Rather she alleged that her parents themselves were forcibly trying to get her married and therefore, she had gone away with the opposite party No.2 from her house out of her own will and had married her. Therefore, the law laid down by the Hon'ble Supreme Court in the aforesaid case is not applicable to the present case.

10. Learned counsel for the applicant next submitted that the opposite party No.2 had not annexed the marriage certificate in

support of his claim.

11. This Court has not granted anticipatory bail application to the opposite party No.2 after recording a satisfaction that the opposite party No.2 has married the victim. The anticipatory bail application was granted after taking into consideration the statement of the victim that her parents themselves wanted to get her forcibly married and for this reason, she had gone away from her house out of her own will and that *prima facie*, allegation of any offence by the opposite party No.2 was not made out.

12. In view of the aforesaid discussion, there is no merit in the instant application and the same is accordingly **rejected**.

Order Date :- 13.12.2023/Raj