

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 2930 of 2023

Applicant :- Mohd. Shareef (Shareef Khan)

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

Counsel for Applicant :- Dinesh Kumar Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Dinesh Kumar Ojha, the learned counsel for the applicant, Sri Akhilesh Kumar Vyas, the learned Additional Government Advocate-I 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. 128 of 2022, under sections 147, 148, 323, 504, 506, 427, 452, 354-Kha, 376D, I.P.C., and section 3/4, 7/8, Protection of Children from Sexual Offences (POCSO) Act, 2012, P.S. Mandhata, District Pratapgarh.

3. The aforesaid case has been registered on the basis of a first information report lodged on 28.04.2022 at 15:23 hrs. against 13 named accused persons, including the applicant, alleging that at about 5:00 p.m. on 21.04.2022 all the accused persons attacked the informant's house, demolished a wall and started throwing debris in a well. When the informant resisted, all the accused persons assaulted her by entering her house and they also beaten up the her mother and sister and the accused Shahenshah, Salman, Fullan, and Mehtab raped the informant's sister.

4. In the statements of the informant and her family members recorded under section 161, CrPC, all of them reiterated the FIR version.

5. The Investigating Officer recorded statement of some Independent witnesses, all of whom stated that there is a dispute regarding a land, which is recorded as Naveen Parti and suit under section 122-B of the U.P.Z.A. and L.R. Act was filed by the Lekhpal in the Court of SDM, Sadar in the year 1998. Co-accused- Salman had filed a PIL (Civil) No. 21932 of 2021 in this court and for this reason the informant has falsely implicated the applicant and his family members alleging commission of rape, whereas the fact is that the informant was getting a wall raised on the disputed land forcibly, due to which a scuffle ensued and persons from both the sides indulged in brick-batting.

6. The informant and her family members were medically examined.

The informant has suffered some contusions. Her mother also suffered two contusions on right leg and thigh. Her sister, who was allegedly raped, has not suffered any visible injury. In the Pathological Examination Report no spermatozoa was seen in the vaginal smear slide and in the Radiological Examination Report her age has been opined to be 18 years.

7. The investigating officer has recorded statement of the Doctor, who has conducted medico-legal examination of the victim and she stated that no mark of any injury was found on any part of the victim's body.

8. Co-accused persons, namely, Salman, and Yunus alias Mohd. Yunus have been granted bail by this Court by means of orders dated 02.06.2023, and 04.10.2023 passed in Criminal Misc. Bail Applications Nos.7378 of 2023, and 2149 of 2023 respectively.

9. Co-accused, Shahanshah and Mohd. Haneef have been granted anticipatory bail by means of orders dated 02.11.2023 and 04.12.2023 passed by this Court in Criminal Misc. Anticipatory Bail Application Nos. 2462 of 2023 and 2767 of 2023 respectively.

10. Having considered the aforesaid facts and circumstances of the case and keeping in view the facts that the Revenue Department has filed a suit against the informant for illegal possession on Gram Sabha land; that the applicant had filed a P.I.L. against the informant; that all the independence witnesses have stated that the informant herself was raising a wall on Gram Sabha land, which was opposed by certain persons and persons from both the sides have indulged in brick-battening and that the allegation of rape is not supported by the findings of the medico-legal examination report and statement of the Doctor recorded by the investigating Officer, coupled with the fact that the applicant has no criminal history and two co-accused persons have been granted anticipatory bail 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-Mohd. Shareef (Shareef Khan) 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 :- 18.12.2023
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