

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2987 of 2023

Applicant :- Holi Ram And 2 Others

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Manoj Kumar Singh, the learned counsel for the applicants as well as Sri Virendra Kumar, the learned Additional Government Advocate appearing on behalf of the State and perused the records.

2. The instant application has been filed by the applicants seeking anticipatory bail Complaint No.23 of 2020, under Sections 354, 354 (A), 323, 504, 506 I.P.C. and Section 9 (g)/10, 16/17 of the Prevention of Children from Sexual Offences Act, registered at Police Station Ramgaon, District Bahraich.

3. The aforesaid case has been registered on the basis of an application filed under Section 156 (3) Cr.P.C. filed against the applicants. The applicant no.1 is the father of the applicant nos.2 and 3. The F.I.R. alleges that the accused persons had caught hold of the complainant's daughter when they had gone to attend the call of nature at about 7.00 p.m. on 16.02.2020. The younger daughter some how escaped but the elder daughter was beaten up and was raped by the applicant nos.2 and 3.

4. In the statement of the victim recorded under Section 202 Cr.P.C. she merely stated that the applicant nos.2 and 3 had insulted her and had cause injury on her head and the applicant no.1 had not restrained them.

5. In the statement of the victim's mother recorded under Section 202 Cr.P.C. she merely stated that her younger daughter was accompanying the victim at the time of the incident and she came home and told that the elder daughter had become unconscious. Her husband had gone and brought the victim back home. There was a stitched wound on her skull and the victim had told that the applicant no.2 had caused the injury on her head and that the applicant no.3 was accompanying the applicant no.2. She categorically stated that the victim did not say any other thing. Another person Mata Prasad has also given a statement under Section 202 Cr.P.C. wherein he has stated that he had gone to the spot of occurrence along with 6-7 other persons and the victim had told that the applicant nos.2 and 3 had raped her on the exhortation of applicant no.1.

6. The victim's younger sister who is said to be accompanying her at the time of incident has not been examined.

7. In the affidavit filed in support of the anticipatory bail-application it has been contended that the applicants are innocent, they have no criminal history and they have falsely been implicated in the present case for the reason that a non-cognizable report was lodged on 15.02.2020 against the aforesaid witness Mata Prasad and his two sons.

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

9. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the incident allegedly took place on 16.02.2020 and the complaint has been filed on 26.02.2020; that there are major discrepancies in the versions of persons who have given their statements under Section 202 Cr.P.C.; that the younger sister of the victim who is said to be

present on the spot has not been examined coupled with the fact that the applicants have 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.

10. In view of the above, the anticipatory bail application of the applicants is **allowed**. In the event of arrest/ appearance of **applicants-Holi Ram, Nageshwar and Mulayam** before the learned Trial Court in the aforesaid case crime, they shall be released on anticipatory bail on their 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 :- 20.12.2023
Ram.