

Court No. - 64

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 8113 of 2024

Applicant :- Piyush Kohli

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- M J Akhtar, Shahzad Alam, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. Heard Sri V.M. Zaidi, learned Senior Counsel assisted by Sri Shahzad Alam, learned counsel for the applicant and Sri Ajay Singh, learned AGA-I for the State.

2. The present anticipatory bail application has been filed by the applicant - **Piyush Kohli** seeking anticipatory bail in Case Crime No.07 of 2020, under Sections 354, 354Kha, 323, 506, 376 I.P.C., Police Station Mahila Thana, District Moradabad.

3. The FIR of the present matter was lodged on 16.01.2020 for offences under Sections 354, 354-Kha, 323, 506 I.P.C. by the victim against the applicant, Vijay Mehta and Piyush Kohli on the basis of an application addressed to the Senior Superintendent of Police, Moradabad with the allegation that she was previously working in Hydo Design Management Company, Noida. Due to her illness, she left the job around six months back and came back to her house. On 14.12.2019 in the afternoon she received a phone call from Sudhir Gupta the owner of the company on which he stated that if she again wants the work in the company then she may meet him near the petrol pump Peeli Kothi, Moradabad where he has come for some work. He will increase her salary also. She being unemployed and taking the words of Sudhir Gupta correct reached the said place at about 09:30 pm where she met the accused persons who told her to sit in the car and were talking to her and assured her that her job is confirmed and she may eat sweets due to the said reason. She then consumed the sweets given to her by Sudhir Gupta after which she became intoxicated. The accused persons then took her to a lonely place and forcibly enraged her modesty and tried to force upon her. They tore her clothes and assaulted her. On her raising a shout, they assaulted her and while going threatened her of not disclosing it to anyone. She then came to understand that they had come there in a planned

manner. On 15.12.2019 she went to the Mahila Thana, Moradabad for lodging a report and gives an application but no action was taken. She has then come with an application for lodging of her report and appropriate legal action.

4. Learned counsel for the applicant submitted as under :-

- (i) The applicant has been falsely implicated in the present case.
- (ii) The anticipatory bail of co-accused Sudhir Gupta was although rejected by this Court vide order dated 07.02.2024 passed in Criminal Misc. Anticipatory Bail Application No. 14101 of 2023.
- (iv) Against the said order, the said accused filed a Special Leave Petition (Criminal) Diary No. 14273 of 2024 (Sudhir Gupta vs. State of U.P. and another) in which Apex Court vide order dated 15.05.2024 issued notice and directed to convert the non-bailable warrant issued against the petitioner to bailable warrant of the like amount. It was further directed that the petitioner shall appear before the trial court concerned and furnish bail.
- (v) Subsequently, the Apex Court passed an order on 22.07.2024 in the said matter which was then numbered as Special Leave to Appeal (Criminal) No. 7478 of 2024 (Sudhir Gupta vs. The State of U.P. and another) and interim order granted to the petitioner was made absolute. The Special Leave Petition was disposed of.
- (vi) The applicant challenged the proceedings of the present case in Criminal Misc. Application U/S 482 Cr.P.C. No. 5162 of 2024, which is pending before this Court. Paragraph 51 of the affidavit has been placed before this Court.
- (vii) The victim although, has reiterated the version of the F.I.R. in her statement under Section 161 Cr.P.C. but in her statement recorded under Section 164 Cr.P.C. she improves the same and states of the accused persons committing rape upon her and as such the version is not consistent.
- (viii) The investigation has been concluded and a final report dated 03.08.2020 was submitted, after which an objection / protest petition dated 15.10.2020 was filed by the informant, on which the court concerned rejected the Final Report No. 16 of 2020 and directed the matter to be treated as a complaint case and posted it for recording of the statement of complainant under Section 200 Cr.P.C. vide order dated 09.12.2020.

(ix) The complainant filed a Criminal Revision No. 109 of 2020 challenging the order dated 09.12.2020 which was allowed on 02.01.2021 and the impugned order therein was set aside and the matter was remanded back to the court of the Magistrate to reconsider it afresh and pass appropriate orders on the police report submitted under Section 173 Cr.P.C.

(x) The court concerned rejected the final report No. 16 of 2020 and summoned the applicant and two other accused persons vide order dated 23.03.2023 for offences under Sections 354, 354Kha, 323, 506, 376 I.P.C

(xi) The applicant be, thus, granted anticipatory bail.

5. Per Contra, learned counsel for the State opposed the prayer for anticipatory bail vehemently and submitted as under :-

(i) The order sheet of the trial court which is annexed as S.A-1 to the supplementary affidavit dated 01.09.2024, from 23.03.2023 to 23.08.2024 shows that non-bailable warrants have been issued against the applicant.

(ii) Since the applicant has been summoned by the court concerned and he has failed to appear before it, non-bailable warrants issued against him and as such he has been avoiding the process of law and absconding and as such in view of the judgements of Apex Court in the case of **State of Haryana vs. Dharamraj : 2023 SCC OnLine SC 1085** and in the case of **Srikant Upadhyay vs. State of Bihar : 2024 SCC Online SC 282** the applicant is not entitled for grant of anticipatory bail.

(iii) The order of co-accused Sudhir Gupta dated 07.02.2024 passed by this Court has not been interfered by the Apex Court.

(iv) The allegations against the applicant are serious in nature of committing rape upon the victim along with co-accused.

(v) The doctor giving the supplementary medical examination report of the victim does not rule out commission of rape upon her.

(vi) The judgement of Apex Court in the case of **"X" vs. State of Maharashtra and another : 2023 SCC OnLine SC 279** in paragraph nos. 20, 21, 27, 32 and 33 has set aside the order granting bail to the accused therein and it is observed that the nature of gravity of offence, financial stature, position and standing of the accused with that of the victim / prosecutrix has to

be considered. It is held that variation in the narration of the victim cannot be considered while granting anticipatory bail.

(vii) The anticipatory bail be rejected.

6. After having heard the learned counsel for the parties, perusing the records, it is evident that the anticipatory bail of identically placed co-accused Sudhir Gupta has been rejected by this Court vide order dated 07.02.2024. The said order reads as under :

"1. List revised.

2. Heard Sri O.P. Singh, learned Senior Advocate assisted by Sri Ram Bilas Yadav, learned counsel for the applicant, Sri Mehul Khare, learned counsel for the first informant and Sri Ajay Singh, learned AGA-I for the State and perused the records.

3. The present anticipatory bail application has been filed by the applicant Sudhir Gupta with the following prayers:

"It is, therefore, most respectfully prayed that this Hon'ble Court may very graciously be pleased to allow this application and grant the Anticipatory Bail to the applicant during the pendency of his trial in FIR/Case Crime No. 07 of 2020, under Section 354, 354-Kha, 323, 506, 376 I.P.C., Police Station Mahila Thana, District Moradabad.

4. At the very outset learned counsel for the first informant submits that he does not intend to file any counter affidavit to the petition and the application be heard and decided.

5. The Court thus proceeds to hear the matter.

6. The FIR of the present matter was lodged on 16.01.2020 for offences under Sections 354, 354-Kha, 323, 506 I.P.C. by the victim against the applicant, Vijay Mehta and Piyush Kohli on the basis of an application addressed to the Senior Superintendent of Police, Moradabad with the allegation that she was previously working in Hydo Design Management Company, Noida. Due to her illness, she left the job around six months back and came back to her house. On 14.12.2019 in the afternoon she received a phone call from Sudhir Gupta the owner of the company on which he stated that if she again wants the work in the company then she may meet him near the petrol pump Peeli Kothi, Moradabad where he has come for some work. He will increase her salary also. She being unemployed and taking the words of Sudhir Gupta correct reached the said place at about 09:30 pm where she met the accused persons who told her to sit in the car and were talking to her and assured her that her job is confirmed and she may eat sweets due to the said reason. She then consumed the sweets given to her by Sudhir Gupta after which she became intoxicated. The accused persons then took her to a lonely place and forcibly enraged her modesty and tried to force upon her. They tore her clothes and assaulted her. On her raising a shout, they assaulted her and while going threatened her of not disclosing it to anyone. She then came to

understand that they had come there in a planned manner. On 15.12.2019 she went to the Mahila Thana, Moradabad for lodging a report and gives an application but no action was taken. She has then come with an application for lodging of her report and appropriate legal action.

7. Learned counsel for the applicant argued as follows:-

i) The applicant has been falsely implicated in the present case. This incident is of 14.12.2019 at about 09:30 pm but the FIR has been lodged after one month and two days on 16.01.2020.

ii) The victim in her statement under Section 161 Cr.P.C. has reiterated the version of the FIR but subsequently in her statement under Section 164 Cr.P.C. she improved the same and states of the accused persons committing rape upon her.

iii) The investigation concluded and a final report dated 03.08.2020 was submitted in favour of three accused persons on which notice was issued to the informant vide order dated 03.10.2020. The informant then filed an objection/protest petition dated 15.10.2020 supported by her affidavit which was directed to be treated as a complaint. After rejection of the final report No. 16/2020 dated 03.08.2020 the matter was directed to be treated as a complaint and be listed for recording of the statement of the complainant under Section 200 Cr.P.C. vide order dated 09.12.2020.

iv) A Criminal Revision No. 109 of 2020 was filed by the victim against the order dated 09.12.2020 which was allowed vide judgement and order dated 02.01.2021, the order impugned therein was set aside and the matter was remanded back to the learned court of the Magistrate to reconsider it afresh and pass appropriate orders on the police report submitted under Section 173 Cr.P.C.

v) The court concerned vide its order dated 23.03.2023 rejected the final report No. 16 of 2020 dated 03.08.2020 and summoned the applicant and two other co-accused for offences under Sections 354, 354-Kha, 323, 506, 376 I.P.C.

vi) The prosecution version has been improved by the victim in her statement under Section 164 Cr.P.C. and also in her protest petition wherein the allegation of rape has been added which is to give the case a different colour.

vii) The applicant was previously involved in one case in which a final report was submitted in his favour which was duly accepted by the court concerned vide order dated 13.12.2021, para 5, 6 and 7 of the supplementary affidavit dated 20.01.2024 and annexures S.A.2 and 3 have been placed before the Court for the same.

8. Per contra, learned counsel for the first informant argued as follows:-

i) The applicant is named in the First Information Report.

ii) The case is of the applicant and co-accused committing rape upon the victim.

iii) *The applicant and co-accused have been summoned by the trial court vide order dated 23.03.2023.*

iv) *The medical evidence does not rule out rape being committed upon the victim as per the opinion of the doctor given in the supplementary medical examination report.*

v) *Co-accused Piyush Kohli filed a Crl. Misc. Application 482 No. 47172 of 2023 (Piyush Kohli Vs. State of U.P. and another) challenging the summoning order dated 23.03.2023 before this Court but the said petition was got dismissed as withdrawn on the request that the order is revisable and the applicant shall avail alternative remedy, copy of the order dated 02.01.2024 has been produced before the Court which is taken on record.*

vi) *Co-accused Vijay Mehta has challenged the summoning order in a Criminal Revision No. 139 of 2023 before the Sessions Judge concerned which has been rejected vide order dated 31.10.2023.*

vii) *While placing the order sheet of the trial court which is annexure 17 to the affidavit it is argued that the bailable warrants have been issued against the applicant vide orders dated 15.04.2023, 25.04.2023 and 08.05.2023 but still the applicant has not appeared before the trial court and is thus an absconder.*

viii) *Judgment of the Apex Court in the case of X Vs. State of Maharashtra and another : 2023 SCC OnLine SC 279 has been placed before the Court and while placing para 20, 21, 27, 32 and 33 it is argued that in identical circumstances, the Apex Court has set aside and order granting anticipatory bail to the said accused therein and has observed that the nature and gravity of the offence, financial stature, position and standing of the accused with that of the victim/prosecutrix has to be considered. The variation in the narration of the victim cannot be considered while granting anticipatory bail.*

ix) *It is argued that the anticipatory bail application of the applicant be rejected.*

9. *Learned counsel for the State has also adopted the arguments of learned counsel for the first informant.*

10. *After having heard learned counsels for the parties and perusing the records along with the dictum of the Apex Court, it is apparent that the applicant is named in the FIR. He is the owner of a company. The victim was an employee in the said company. The identity of the applicant cannot be disputed as he was the employer of the victim/first informant. Bailable warrants have been issued against the applicant after his non appearance to the call through summoning order. The medical evidence does not rule out sexual violence on the victim. The applicant has been summoned by an order of the court of competent jurisdiction. I do not find it a fit case for interference.*

11. *Accordingly, the anticipatory bail application is rejected."*

7. Against the said order, a Special Leave Petition was preferred before the Apex Court in which on 15.05.2024, notice was issued and the non-bailable warrant was converted to bailable warrant and the petitioner therein was directed to appear before the trial court and furnish bail. The said order reads as under :-

"ORDER

1. Delay condoned.

2. We have heard Mr. D.P. Singh, the learned counsel appearing for the petitioner.

3. Issue notice, returnable on 22 July, 2024.

4. In the facts and circumstances of the case we deem fit to convert the non-bailable warrant issued against the petitioner to a bailable warrant of the like amount. We direct the petitioner to appear before the trial court and furnish the bail."

8. Subsequently, the said Special Leave Petition was disposed of vide order dated 22.07.2024 by which the interim order was made absolute and the petition was disposed of. The said order reads as under :-

"ORDER

Delay condoned in re-filing is condoned.

This Court had allowed interim protection to the petitioner on 15th May, 2024 consequent to which petitioner has appeared before the court of Additional Chief Judicial Magistrate, Court No. 1, Moradabad and furnished bail.

Learned counsel appearing for the State would submit that the petitioner has co-operated in the investigation.

In view of the above, interim protection granted to the petitioner is made absolute.

The special leave petition is disposed of.

Pending application, if any, stands disposed of."

9. Insofar as, the variation in the version of the victim is concerned, the Apex Court in the case of **"X" vs. State of Maharashtra** (Supra) has held that the same cannot be considered while granting the anticipatory bail.

10. The applicant is named in the F.I.R. and there are allegations

against him therein and also in the statements of victim recorded during investigation and further in the protest petition. The applicant has been summoned by the court concerned and is absconding and avoiding the process of law. No ground for interference is made out in the anticipatory bail application.

11. Accordingly, the present anticipatory bail is **rejected**.

(Samit Gopal,J.)

Order Date :- 4.10.2024

Manoj