

Court No. - 15

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 112 of 2024

Applicant :- Shubham Bhargav

Opposite Party :- State Of U.P. Thru. Secy. Deptt. Home Lko.

Counsel for Applicant :- Vinod Kumar

Counsel for Opposite Party :- G.A.,Ajay Kumar Shukla,K.K.
Sharma

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State, as well as Mr. Ajay Kumar Shukla, learned counsel for the complainant/informant, and perused the record.

Supplementary affidavit, filed on behalf of the informant/complainant, is taken on record.

2. This application has been moved by the applicant-**Shubham Bhargav** for grant of anticipatory bail in FIR/Case Crime No.0297 of 2022, under Sections 366 and 376 IPC lodged at Police Station Ataria, District Sitapur.

3. Learned counsel for the applicant submits that it is a case of false implication and this Court after hearing at length has granted interim protection to the applicant vide order dated 23.01.2024 and the applicant is adhering to all the conditions which have been imposed on him while protecting his liberty. It is also submitted that the statement of the prosecutrix has been recorded three times; once under Section 161 CrPC and twice under Sections 164 CrPC and out of these three statements, two statements have been given in favour of the applicant and in such statements the prosecutrix has not levelled any allegation against the applicant.

4. Elaborating further, it is submitted that it was on the basis of the statements of the prosecutrix recorded under Sections 161 and 164 CrPC closure/final report was prepared and sent to the higher authorities of the police for submission to the court, however, on intervention of the informant/complainant further investigation was made wherein the statement of the prosecutrix was again recorded under Sections 161 and 164 CPC wherein she, for the very first time, has alleged the allegation of rape against the applicant. It is vehemently submitted that the case rests on the sole testimony of the prosecutrix, who has given different statements on different occasions and she may not be deemed to be reliable and the same is required to be tested on touchstone of cross-examination during the course of trial. It is further submitted that the applicant is not having any previous criminal antecedents to his credit and there is no apprehension that after being released on anticipatory bail, the applicant may flee from the course of law or may otherwise misuse the liberty.

5. Learned A.G.A. as well as learned counsel for the informant/complainant opposes the prayer of the applicant for grant of anticipatory bail on the ground that the applicant has committed a heinous offence and, therefore, he is not entitled for any protection. Shri Ajay Kumar Shukla, learned counsel for the informant/complainant, adds that it was only on account of assurance given by the applicant to marry the prosecutrix, she has not alleged any allegation against the applicant in her earlier statements recorded under Sections 161 and 164 CrPC.

6. Having heard learned counsel for the parties and having perused the record, it is reflected that this Court while granting interim protection to the applicant on 23.01.2024 has taken into consideration

all the aspects of this case and material which has been collected during the course of investigation and granted interim protection to the applicant. The order dated 23.01.2024 whereby interim protection was granted to applicant is reproduced verbatim as under:

"1. Shri K.K. Sharma and Shri Ajay Kumar Shukla, Advocates have filed their 'vakalatnama' on behalf of the complainant/informant, the same is taken on record. However, Shri Ajay Kumar Shukla is present on behalf of the complainant/informant.

2. Learned A.G.A. informs that he has procured complete instructions in the matter including up-to-date case diary and charge sheet has also been submitted.

3. Heard learned counsel for the applicant, Shri Ajay Kumar Shukla, learned counsel appearing for the informant/complainant as well as learned A.G.A. for the State and perused the record.

4. The instant application has been moved by the applicant- Shubham Bhargav, in Case Crime No. 297 of 2022, under Section 366 and 376 I.P.C., Police Station Ataria, District Sitapur, with the prayer to enlarge him on anticipatory bail, as he is apprehending arrest in the above-mentioned case.

5. Learned counsel for the applicant while pressing the anticipatory bail application submits that it is a case of false implication. The age of the prosecutrix is about 19 years. The F.I.R. in this case has been lodged by the father of the prosecutrix on 30.10.2022 alleging therein that his daughter aged about 19 years have been enticed away by the applicant, aged about 22 years with the help of the parents of the applicant. However, the prosecutrix appeared herself on 12.11.2022 and moved a written application before the S.H.O. of Police Station Ataria, District Sitapur, stating specifically that she being annoyed had left her home herself and when she came to know about the F.I.R., she herself returned back.

6. It is also submitted that the statement of the prosecutrix was also recorded under Section 161 and 164 Cr.P.C. wherein she did not levelled any allegation against any person including the applicant and stated that she was annoyed with her family members and had gone to Delhi on 27.10.2022 and when he could not find the address of a person known to her, she stayed at the railway station and from where she returned back on 12.11.2022 and also that she had left her home with her own wish and volition and nothing wrong has been done with her by anyone.

7. It is further submitted that having regard to the statement given by the prosecutrix, the investigating officer has submitted a 'closure report/final report'. However, on an application given from the informant's side the Additional S.P. concerned has passed an order for further investigation and it was under that order the further investigation commenced and the statement of the prosecutrix was again recorded under Section 161 and 164 Cr.P.C. where she for the

very first time alleged allegation of rape against the applicant.

8. It is vehemently submitted that subsequent statements under Section 161 and 164 Cr.P.C. has been given by the prosecutrix under the influence of her family members only on account of political enmity and even if the further investigation has commenced but the same may not be enough to wash away the material/evidence already collected by the investigating officer and even if both the statements of the prosecutrix are taken on its face, it will emerge that contradictory statements have been given by the prosecutrix making the case of the prosecution highly improbable.

9. It is also submitted that co-accused persons, namely Parashuram and Seema Bhargav (parents of the applicant) against whom the allegation of abduction has been levelled, have been granted anticipatory bail by a co-ordinate Bench of this Court as well as by this Court, vide order dated 21.12.2023 and 18.01.2024 passed in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 2950 of 2023 and 89 of 2024, respectively.

10. It is further submitted that applicant is not having any criminal antecedents and will remain present before the trial court as and when his presence would be required and he was not arrested by the police during the course of investigation, as his arrest was protected by the order dated 20.02.2023 passed by a Division Bench of this Court in Criminal Misc. Writ Petition No. 1419 of 2023. The applicant is ready to cooperate in the trial and would remain present before the trial court as and when his presence would be required. Thus, protection from arrest may be granted to him.

11. Learned A.G.A., however, opposes the prayer of anticipatory bail of the applicant on the ground that he is the main accused person of the alleged crime and, therefore, he is not entitled for any discretion.

12. Shri Ajay Kumar Shukla, learned counsel appearing for the informant/complainant submits that he be granted sometime for the purpose of filing counter affidavit/objections. However, having regard to the allegations levelled by the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C., the applicant is not entitled for any discretion.

13. Having heard learned counsel for the parties and having perused the record, it is reflected that after lodging of the F.I.R. the applicant had appeared before the S.H.O. concerned herself on 12.11.2022 and had moved a written application wherein no allegation of any kind has been levelled against the applicant. Similar was the condition of the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. as in these statements also there was no whisper pertaining to the instant applicant or any other co-accused persons. However, after many days of recording her statement under Section 161 and 164 Cr.P.C., an application appears to have been moved by the informant before higher police officers with regard to the allegations of rape levelled against the applicant and of abduction against his parents and it is in this background the order for further investigation was passed and it was only thereafter the prosecutrix has alleged allegation of rape against the applicant in her statements recorded

under Section 161 and 164 Cr.P.C.. The parents of the applicant namely, Parashuram and Seema Bhargav have already been granted anticipatory bail by a co-ordinate Bench of this Court as well as by this Court.

14. Thus, keeping in view all the facts and circumstances of the case and having regard to the law laid by the Hon'ble Supreme Court in *Siddharam Satlingappa Mhetre v. State of Maharashtra* : (2011) 1 SCC 694, *Sushila Aggarwal v. State (NCT of Delhi)* (2020) 5 SCC 1, *Gurbaksh Singh Sibbia vs. State of Punjab*; (1980) 2 SCC 655 and in *Nathu Singh Vs State of U.P. and Others*, 2021(6) SCC 64, protection from arrest till the next date of listing under any process of the trial court, may safely be granted to the applicant.

15. List this case on 31st January, 2024 in the first 10 cases of the cause list, by which date the State as well as learned counsel for the complainant/informant may file counter affidavit/objections with regard to the prayer of anticipatory bail of the applicant.

16. It is provided that till the next date of listing, in the event of arrest of the applicant, namely, Shubham Bhargav under any process of the trial court or otherwise in the above-mentioned case or on his presence before the trial court within 10 days from today, which ever is earlier, shall be released forthwith on anticipatory bail on his furnishing a personal bond of Rs. 50,000/- and two sureties each in the like amount to the satisfaction of the Station House Officer of the Police Station concerned/Investigating Officer/Trial Court with the following conditions:-

(i). The applicant if not arrested earlier, shall surrender before the trial court within 10 days from today and will cooperate in the trial.

(ii). The applicant shall Cooperate in the investigation and will make himself available as and when required by the Investigating officer of the case, even for the recovery of any fact, in case of further investigation.

(iii). The applicant shall not make any attempt to influence the prosecution witnesses and will also not commit any crime during his release on anticipatory bail.

(iv). The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and specially when the prosecution witnesses are present in court.

(v). The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C.

17. If in the opinion of the trial court default of any of the condition placed above is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and shall proceed against him in accordance with law.

18. It is clarified that all the observations contained in this order are only for disposal of this anticipatory bail application and shall not

affect the trial proceedings in any manner."

7. Thus, it is evident that the prosecutrix in earlier part of the investigation has not supported the prosecution case, however, after submission of the final/closure report on commencement of further investigation when her statement was again recorded under Sections 161 and 164 CrPC she has chosen to support the prosecution case and the defence of the applicant appears to be that the applicant is innocent and the prosecutrix is giving different statements on different occasions and since the case is based on her sole testimony, her statements recorded later on may not be deemed as truthful. Having regard to all the facts and circumstances of the case and for the reasons narrated in the order dated 23.01.2024 which have remained un-rebutted even after submission of the counter affidavit by the informant/complainant, in the considered opinion of this Court, the facility of anticipatory bail may be provided to the applicant during the course of trial, however, subject to certain conditions and order dated 20.01.2024 is made absolute.

8. Thus, this anticipatory bail application, moved on behalf of the applicant - **Shubham Bhargav** is **allowed** with a direction that in the event of arrest of the applicant under any process of the trial Court or on his/her appearance/surrender before the trial Court **within 20 days from today i.e. till 19.02.2024**, whichever is earlier, he/she shall be released forthwith on anticipatory bail on his/her furnishing a personal bond of Rs. 50,000/- and two sureties each in the like amount to the satisfaction of the trial Court, subject to the following conditions, however, if in the opinion of the trial Court, the personal and surety bonds, earlier filed by the applicant in compliance of interim protection granted by this Court, appear to be

sufficient and trustworthy, the trial Court in its discretion may take the same along with this order.

(i). The applicant, if not arrested earlier, shall appear before the trial court within 20 days from today i.e. till 19.02.2024 and cooperate in the trial and shall not seek any adjournment when the prosecution witness would be in attendance.

(ii). In case of further investigation or re-investigation the applicant shall cooperate in the investigation and make himself/herself available as and when required by the Investigating officer of the case, even for the recovery of any fact.

(iii). The applicant shall not make any attempt to influence the prosecution witnesses and will also not commit any crime during his/her release on anticipatory bail.

(iv). The applicant shall file an undertaking to the effect that he/she shall not seek any adjournment on the dates fixed for evidence and specially when the prosecution witnesses are present in court.

(v). The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C.

9. If in the opinion of the trial court default of any of the condition placed above is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and shall proceed against him/her in accordance with law.

10. It is clarified that all the observations contained in this order are only for disposal of this anticipatory bail application and shall not affect the trial proceedings in any manner.

Order Date :- 31.1.2024MVS/-