

Court No. - 14

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 Cr.P.C. No. - 1572 of 2024

Applicant :- Prabal Tripathi

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

Counsel for Applicant :- Pankaj Gupta

Counsel for Opposite Party :- G.A., Raj Kumar Mishra

Hon'ble Karunesh Singh Pawar, J.

The present bail application has been filed by the applicant under Section 438 Cr.P.C. apprehending his arrest in case crime No.0261 of 2024, under Sections 376(2)(N) IPC, Police Station Sushant Golf City, District Lucknow.

Heard learned counsel for the applicant and learned A.G.A. for the State as well as learned counsel for respondent no. 2.

The coordinate Bench of this Court while granting interim protection to the applicant vide order dated 16.07.2024 has passed the following order:-

"1. Supplementary affidavit filed today on behalf of the applicant is taken on record.

2. Heard the counsel for the applicant as well as learned AGA.

3. The present application under Section 438 of Cr.P.C. has been filed for anticipatory bail in case crime no. 0261 of 2024, under Sections 376(2)(N) IPC, Police Station Sushant Golf City, District Lucknow.

4. Vide order dated 06.07.2024, learned court below has rejected application for anticipatory bail of the applicant.

5. In terms of the FIR, allegations were leveled that the informant was aged about 21 years and had met with the applicant in a degree college and both of them become friends. It was also stated that the applicant had proposed to marry and the proposal was kept with the family of both the person and during the pendency of consideration of proposal the said two persons, physical relations were formed allegedly on the false pretext of marriage. It was also stated that during the said period, it was apprehended that the victim had become pregnant and medicines were also given to her. Subsequently, it was alleged that the applicant was now refusing to marry. In sum and substance, the allegations are that for a term of four years, physical relations were formed on the false pretext of marriage. Reliance is place by the counsel for the applicant on the judgment of the Supreme Court in the case of Deepak Gulati Versus State of Haryana (2013) 6 SCR 544, Naim Ahmad Versus State (NCT of Delhi)

(2023) AIR (SC) Cri 1003 and XXXX Versus State of Madhya Pradesh and another (2024) 256 AIC 63, to argue that applicant and the victim are major and relations continued in between them over a span of four years as such, the applicant is being harassed and no offence under Section 376 IPC can be made out. The applicant apprehends his arrest on the basis of the case, which according to the applicant, is not made out on the basis of allegations. It is further brought on record that the allegations were leveled against the entire family member, who have got the protection from this Court in Writ Petition No. 4046 of 2024 vide order dated 07.06.2024, whereas in case of the applicant, the said protection was denied vide order dated 14.06.2024. It has also been stated that on the very date on which, the petition was dismissed as withdrawn, proceedings were initiated under Section 82 Cr.P.C. at the instance of the police authorities and an order was also passed on the said application under Section 82 Cr.P.C., however, final proclamation has not been issued.

6. The learned A.G.A. opposes the anticipatory bail application mainly on the ground that as the proceedings have been initiated under Section 82 Cr.P.C., in view of law as explained in the case of Srikant Upadhyay & Others Versus State of Bihar & Another INSC 202, the anticipatory bail application deserves to be rejected.

7. Prima facie, on perusal of the said judgment in the case of Srikant Upadhyay (Supra), although the Court had said that the views formed that the person seeking anticipatory bail is not cooperating with the trial, the benefit of anticipatory bail cannot be extended, however, on the same breath in para 24, it has been held that this observations will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. In the present case, the proceedings under Section 82 Cr.P.C. were initiated at the instance of the police authorities. Considering the nature of the allegations and the law as explained in the case of Deepak Gulati Versus State of Haryana (Supra) and the other cases referred above, prima facie, a case for anticipatory bail is made out, as such, the applicant Prabal Tripathi is granted interim bail in aforesaid FIR number on his furnishing a personal bond with two sureties of Rs.20,000/- each to the satisfaction of Station House Officer concerned with the following conditions:

(a) that the applicant shall make himself available for interrogation by a police officer as and when required;

(b) 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;

(c). that the applicant shall not leave India without previous permission of the Court.

8. Learned AGA is directed to file the objection, if any, by the next date.

9. List this case on 8th August, 2024."

Learned counsel for the applicant submits that charge sheet in the matter has been filed. The applicant has cooperated in the investigation and further undertakes to cooperate in the trial.

Learned A.G.A. as well as learned counsel for the complainant

has vehemently opposed the bail application, however, they do not dispute that the applicant has no criminal antecedent.

On due consideration to the fact that charge sheet has been filed; the applicant has cooperated in the investigation and further undertakes to cooperate in the trial, the interim protection granted by this Court vide order dated 16.07.2024 is made absolute in view of dictum of Apex Court in re: ***Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98.***

In view of the above, since, charge-sheet in the matter has been filed, if the applicant is summoned to face trial for offence in question, he shall be released on bail by the trial court on his furnishing a personal bond and two sureties of the like amount to the satisfaction of the trial court concerned with the following conditions:-

- (i) 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 tamper with the evidence;
- (ii) The applicant shall not leave India without the previous permission of the court;
- (iii) The applicant shall not pressurize/ intimidate the prosecution witness;
- (iv) The applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
- (v) In case of breach of any of the above conditions the court below shall have the liberty to cancel the bail;

Any other reasonable restrictions/conditions which the trial court may deem fit and proper can be imposed.

It is made clear that the observations made in granting bail to the applicant shall not in any way affect the trial Judge in forming his independent opinion based on the testimony of the witnesses.

In view of the aforesaid, the application is allowed.

Order Date :- 22.8.2024

R.C.