

Court No. - 14

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 1795 of 2024

Applicant :- Rakesh Kumar

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

Counsel for Applicant :- Umesh Chandra

Counsel for Opposite Party :- G.A.,Anas Ahmad,Anupam
Verma

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/F.I.R No. 228/2024, under Sections 323/328/376/504/506 I.P.C. and Section 3(2)(v) of S.C./S.T. Act, P.S. Haidergarh, District Barabanki.

Heard learned counsel for the applicant as well as learned AGA for the State as well learned counsel for the complainant.

Learned counsel for the complainant submits that the applicant has a remedy to file an appeal against the impugned order passed by the Special Court of S.C./S.T. Act under Section 14-A of S.C./S.T. Act. The anticipatory bail application is barred.

Replying to the objection raised by the learned counsel for the complainant, learned counsel for the applicant has relied on the judgment of "***Ramesh Chandra Vaishya Vs. State of U.P. and another, 2023 SCC online SC 668***". Emphasis is on para 16, 17 and 18.

Learned counsel for the applicant submits that as per the FIR, statement of the victim recorded under Section 161 and 164 Cr.P.C., it is admitted case of the prosecution that no member of the public was present at the alleged place of occurrence, hence, the offence has not been committed in public view. He, thus, submits that the bar envisages under Section 18 of S.C/S.T. Act shall not be applicable in view of the judgment of the Supreme Court passed in the case of "***Prathvi Raj Chauhan v. Union of India, (2020) 4 SCC 727***" as well as ***Ramesh Chandr Vaishya***

(supra).

Since, no offence is made out under S.C./S.T. Act in view of the **Prathvi Raj Chauhan (supra)**, the anticipatory bail application is maintainable.

This Court while granting interim protection to the applicant vide order dated 08.08.2024 has passed the following order:-

"Heard learned counsel the applicant and learned A.G.A. for the State.

The present bail application under Section 438 Cr.P.C. has been filed seeking anticipatory bail in case crime/F.I.R No. 228/2024, under Sections 323/328/376/504/506 I.P.C. and Section 3(2)(v) of S.C./S.T. Act, P.S. Haidargarh, District Barabanki.

Learned counsel for the applicant submits that the victim in her statement under Section 161 and 164 Cr.P.C. has not made any allegation on the present applicant attracting the offence under Section 376 IPC and Section 3(2)(5) of S.C./S.T. Act except the sweeping allegation made without any date or place in the body of the FIR. Only this much has been alleged that the applicant also addressed relating to her caste by taking name of her caste i.e. chamaar.

Learned counsel for the applicant submits that the applicant has drawn attention of the Court towards page no. 9 of the supplementary affidavit where it has been mentioned by the investigating officer that as per caste certificate prepared by Tehsildar Haidargarh dated 17.03.2021 of the victim, she does not belong to caste chamaar rather her caste is pasi.

It has been further submitted that it is a case of false implication. The applicant is innocent. The applicant is not a previous convict; he has no criminal antecedents and he undertakes to cooperate in the investigation.

Learned counsel for the complainant submits that since the offence has been lodged under S.C./S.T Act, therefore, the anticipatory bail application is not maintainable.

Learned counsel for the applicant rebutting the objection of learned counsel for the complainant has placed reliance on the judgment of the Supreme Court passed in "Prathvi Raj Chauhan v. Union of India, (2020) 4 SCC 727", wherein it has been held by the Supreme Court that if prima facie case does not make out attracting the provisions of S.C./S.T. Act, the bar created under Section 18 on the grant of anticipatory bail is not attracted.

Learned Addl. Government Advocate as well as learned counsel for the complainant prays for and is allowed 15 days' time to file counter affidavit.

List on 30.08.2024.

On due consideration to the the fact that prima facie ingredients to attract offences under S.C./S.T. Act as well as under Section 376 IPC is missing in the prosecution case, so also consider the fact that the applicant is not a previous convict and having no criminal history and also considering the judgment in Sushila Aggarwal and others versus State (NCT of Delhi) and another (2020)5 SCC 1 and without entering into the merit of the case, as an interim measure, it would be appropriate to grant interim protection to the applicant under Section 438 Cr.P.C.

Till the next date of listing, it is provided that in the event of arrest, the applicant shall be released on bail on his furnishing a personal bond and two sureties of the like amount to the satisfaction of the arresting officer/I.O./S.H.O. concerned.

The applicant shall cooperate in the investigation and he will not influence the witness.

The accused-applicant will remain present as and when the arresting officer/I.O./S.H.O. concerned call(s) for investigation/interrogation. The applicant shall not leave India without previous permission of the Court.

In case of default, it would be open for the investigating agency to move application for vacation of this interim protection."

Learned counsel for the applicant submits that no allegation has been made by the victim against the present applicant who is father of the co-accused against whom allegation of committing offence under Section 376 IPC has been made.

Learned AGA has submitted that investigation in the matter is going on, however, he could not show from the material on record that the applicant is not cooperating in the investigation.

On due consideration to the fact that there is no allegation made by the victim against the present applicant who is father of the co-accused; statement of the victim recorded under Section 161 and 164 Cr.P.C. suggests that both were having relationship for the past six years; ingredients to attract offence under S.C./S.T. Act are missing as admittedly the offence is not alleged to have been committed in public view, so also the fact that the victim does not belong to caste *chamar* rather she is *pasi* by caste as per the certificate issued by Tehsildar dated 17.03.2021 as well as considering the undertaking given by the applicant that he will cooperate in the investigation, the interim protection granted by this Court vide order dated 08.08.2024 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, it is provided that in the event of arrest, the applicant shall be released on anticipatory bail in the aforesaid Case Crime number on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the arresting officer/investigating officer/S.H.O./trial court concerned with the following conditions:-

(1) The applicant shall cooperate in the investigation and he will not influence the witnesses.

(2) The accused-applicant will remain present as and when the arresting officer/1.O./S.H.O. concerned call (s) for investigation/interrogation.

(3) The applicant shall not leave India without previous permission of the Court.

(4) In case of default, it would be open for the investigating agency to move application for vacation of this interim protection.

In view of the aforesaid, the application is ***allowed***.

Order Date :- 3.9.2024

R.C.