

Neutral Citation No. - 2025:AHC:72090

Court No. - 67

Case :- CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482
BNSS No. - 2999 of 2025

Applicant :- Mohd. Azam Alias Hariyale Babu

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

Counsel for Applicant :- Anil Kumar, Mohit Singh

Counsel for Opposite Party :- G.A.

Hon'ble Chandra Dhari Singh, J.

1. The instant application under Section 482 of B.N.S.S. has been filed seeking anticipatory bail in Case Crime No.141 of 2019, under Sections 376-D, 323, 506 IPC, Police Station Manjhanpur, District Kaushambi.
2. As per the prosecution story, the accused persons committed rape upon the informant and on the complaint, the FIR was lodged against the accused persons for offence punishable under Sections 376-D, 323, 506 IPC in Police Station Manjhanpur, District Kaushambi.
3. The statement of the prosecutrix was recorded under Section 161 CrPC on 11.04.2019 in which she has supported the prosecution story. She was also medically examined and as per medical report, the age of the prosecutrix was found between 25-40 years. The statement of the prosecutrix under Section 164 CrPC was also recorded on 24.04.2019. During the investigation, the Investigating Officer collected CDRs of named accused persons on 14.06.2019. The statements of other witnesses have also been examined by the Investigating Agency on several dates. On the basis of statement of the witnesses of alleged incident and collected evidence during the investigation, the Investigating Officer submitted the final report on 17.07.2019 exonerating all the accused persons named in the first information report.

4. The victim has filed a protest petition on 08.02.2021 which was allowed by the Chief Judicial Magistrate, Kaushambi vide order dated 19.02.2021 and summoned the accused for trial. Against the said order of summoning dated 19.02.2021, the applicant along with other co-accused persons filed criminal revision bearing Criminal Revision No. 22 of 2021 which was dismissed by the Additional Sessions Judge, Court No. 7, Kaushambi vide order dated 17.08.2022. Against the said order, the applicant along with other co-accused persons filed Criminal Misc. Application (under Section 482 CrPC) No. 35033 of 2022 before this Court, which was also dismissed by the High Court vide order dated 27.01.2023 with direction to move discharge application before the trial court at appropriate stage. The applicant alongwith other co-accused persons moved discharge application before the Chief Judicial Magistrate, Kaushambi on 14.02.2023. The said discharge application was rejected by the Chief Judicial Magistrate vide order dated 25.06.2024. The aforesaid order dated 25.06.2024 passed by the Chief Judicial Magistrate, Kaushambi was challenged before this Court by way of filing Criminal Misc. Application (under Section 482 CrPC) No. 37382 of 2024 which was also dismissed vide order dated 05.02.2025 by the High Court. After exhausting all remedies available under law, the applicant filed anticipatory bail application before the Additional Sessions Judge, Court No. 7, Kaushambi which has been rejected vide order dated 19.03.2025. Thereafter the applicant has filed the present anticipatory bail application before this Court.

5. Learned counsel appearing on behalf of the applicant has submitted that the applicant is innocent person and has not committed any offence as alleged by the victim. The Investigating Officer has not found any material against the applicant during the investigation, therefore he has preferred final report against the applicant. On the protest petition, the court concerned has taken cognizance and summoned the applicant alongwith other co-accused to face trial. The statements of independent witnesses examined by the police have not supported the case of prosecution. There are no sufficient material on

record to link the present applicant to the offence as alleged. The medical report is also not supporting the prosecution story. The criminal history of eight cases of the applicant has been explained in paragraph 27 of the paper book. There are no injuries found on the person of the prosecutrix. There are several contradictions in the statement of the prosecutrix under Sections 161 and 164 of the CrPC. It is also submitted that since the applicant has been alleged for commission of serious offence and therefore the applicant has a great apprehension to arrest in the instant case. It is submitted that in the event, the applicant would be arrested and sent to jail in pursuance of the present false case, the same would amount to infringement of his rights as he would be compelled to live undignified life, his movement shall also be restricted and reputation in the society shall also be lowered. There is no direct, indirect or credible evidence against the applicant so as to implicate him in the above mentioned case. Prima facie, no case has been made out against the applicant for offence punishable under Sections 376-D, 323, 506 IPC. He has been falsely implicated due to ulterior motive.

6. Per contra, learned counsel appearing on behalf of State, who has accepted notice in advance, vehemently opposed the instant bail application and submitted that the applicant is charged for offence punishable under Sections 376-D, 323, 506 IPC. It has been submitted that this anticipatory bail application is not maintainable as the same is barred for offence punishable under Section 376-D. He has referred Section 482 (4) of the B.N.S.S. which clearly says that “nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.” In the instant case also, the woman has been raped by the several persons with common intention and therefore this Court may not entertain the said bail application on non-maintainability. On merit of the case, learned counsel for the State submitted that there are sufficient credible material on the record to link the applicant directly for offence punishable under Sections

376-D, 323, 506. It is submitted that this is a case of offence committed by the applicant against the modesty of woman who was raped by the applicant alongwith other co-accused persons on several occasions. It is also submitted that a plain reading of statement of prosecutrix under Section 161 and 164 CrPC there are no material contradictions in the statements of the prosecutrix and the prosecutrix has supported the prosecution. The applicant is also not cooperating with the investigation and if the applicant will grant bail, he shall flee away from justice. His custodial interrogation is required to find out certain facts and the evidence of the instant case. Learned AGA further submitted that the applicant is habitual offender and he has previous criminal history of eight cases and there is a serious threat to the prosecutrix and other witnesses. Taking into consideration of the aforesaid reasons, learned AGA has vehemently submitted that the applicant failed to make out any case for releasing him on bail at the event of arrest.

7. Heard learned counsel for the applicant as well as learned AGA for the State and perused the contents made in the application and material on record.

8. Since the learned AGA has taken objection on the maintainability of the instant bail application and submitted that as per new statute i.e. Bhartiya Nagrik Suraksha Sanhita, 2023 and later on Bharatiya Nyaya Sanhita, 2023 under the gang rape, the anticipatory bail in the case of an offence punishable under Section 70 of B.N.S. is not maintainable. He has referred the provision of B.N.S.S. which is quoted below :

“482. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under subsection (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person 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;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.”

9. From perusal of Section 482 (4) of the B.N.S.S., it is clearly apparent that the provision of the anticipatory bail shall not be applied for commission of offence under Section 65 and sub-section (2) of Section 70 of the Bharatiya Nyaya Sanhita, 2023. Section 70 of the B.N.S. is quoted below.

“70. Gang rape.

(1) Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

(2) Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.”

10. Taking into consideration of the aforesaid sections, I reached at the conclusion that the provision of Section 482 of the BNSS will not applicable if the victim is under 18 years of age. Therefore, in the instant case, admittedly, the victim is more than 18 years, I do not find any merit in the argument advanced by learned AGA on maintainability. Now I proceed on merit of the case.

11. I have perused the statement of the prosecutrix recorded under Section 161 of CrPC which are reproduced hereinunder :

"बयान पीड़िता धारा 161 सी०आर०पी०सी० अन्तर्गत मु०अ०सं० 141/2019 धारा 376D, 323, 506 आई०पी०सी० थाना मंझनपुर जनपद कौशाम्बी बयान पीड़िता मैं रेहाना पत्नी अनिल निवासी सालेपुर थाना करारी जिला कौशाम्बी की रहने वाली हूँ। मेरी उम्र 32 साल है मैं पढ़ी लिखी नहीं हूँ मेरी तबियत खराब थी मैं इलाज कराने आयी थी लवकुश हास्पिटल मंझनपुर दिनांक 04.01.19 को दवा कराकर मंझनपुर चौराहे पर आयी हूँ सिराथू की तरफ से मेरे गांव का टैम्पू आ रहा था उस टैम्पू में मैं बैठ गयी उस टैम्पू में मेरे बैठने से पहले 4 आदमी बैठे थे उन चारों का नाम एक का नाम साहिद पुत्र कल्लू निवासी सालेपुर थाना करारी उम्र 30 वर्ष, दूसरा नूरे आलम पुत्र कल्लन निवासी सालेपुर थाना करारी तीसरा सिद्धीक पुत्र बकरीदी निवासी गडहीपर थाना करारी चौथा हरियाले पुत्र मो० उमर निवासी करारी पांचवां ड्राइवर असलम पुत्र इस्तिखार निवासी सालेपुर थाना करारी में पांचो लोग समदा की तरफ गाड़ी लेकर गये उसी तरफ नदी के आगे लेकर गये मेरा मुंह दबाकर टैम्पू से उतार कर मुझे मारा भी और कसा की तरफ ले गये फिर मुझे नीचे की तरफ लेकर गये समय लगभग रात के 8 बजे मेरे साथ बारी बारी पांचो आदमी ने बलात्कार किया और पांचो आदमी ने मुझे हड़की भी दिया मुझे हड़की देकर पांचो आदमी ने मुझे हड़की भी दिया मुझे हड़की देकर पांचो आदमी चले गये फिर जब मुझे होस आया तो मैं सुबह 5 बजे अपने घर पहुंची हूँ और मैंने अपने भाई को सारी बात बतायी मेरे भाई ने ससुर को बताया फिर मेरा ससुर थाने पर आया और मेरा मुकदमा लिख गया मैं बयान अपनी मर्जी से दे रही हूँ किसी के दबाव में नहीं दे रही हूँ यही मेरा बयान है अब मुझे कुछ नहीं कहना। नि०अं० रेहाना ह०म०आ० कीर्ति सिंह पी०एनओ 0 162060182 बाद नकल बयान की प्रति संलग्न केस डायरी है।

:: सत्य प्रतिलिपि ::”

12. The statement of prosecutrix under Section 164 of the CrPC is also quoted below :-

“1.05.2019

श्रीमान् जी मुकदमा उपरोक्त से सम्बन्धित पर्चा 5 दिनांक 24.04.2019 को किता कर प्रेषित किया गया है आज में निरीक्षक पुनः उक्त अभियोग की विवेचना में मामूर हुआ थाना से खाना होकर पीड़िता उपरोक्त के धारा 164 दं०प्र०सं० के कथन का अवलोकन करने हेतु मा० न्यायालय उपस्थित आया मा० न्या० से अनुमति लेकर बयान का अवलोकन किया जा रहा है अवलोकन बयान 164 दं०प्र०सं० पीड़िता रेहाना पत्नी अनिल निवासी सालेपुर थाना करारी जनपद कौशाम्बी ने अपने धारा 164 दं०प्र०सं० के कथन में बताया है कि दिनांक 04.01.2019 को वह लवकुश हास्पिटल मंझनपुर में दवा कराने गयी थी दवा लेने में उसे रात के 8 बज गये थे तभी उसके गांव का असलम जो आटो चलाता है आया वह उसके आटो में बैठ गयी आटो में 04 लोग साहिद, नूरेआलम, चालक असलम जो उसके गांव के थे व दो अन्य व्यक्ति हरियाले, सद्दीक करारी के थे समदा चौराहे से मोड़ कर पेट्रोल पम्प की तरफ ले गये उसने कहा कि इधर क्यों चल रहे हो तो असलम ने कहा कि किसी से मिलना है फिर चलते हैं फिर साहिद, नूरेआलम, हरियाले, व सद्दीक उसके साथ बतमिजी करने लगे फिर झांडी में ले जाकर पांचो व्यक्तियों ने उसके साथ बारी बारी से बलात्कार किया फिर वो पांचो उसे वहीं छोड़कर भाग गये सुबह के लगभग 05 बजे वह अपने घर गयी।

सत्य प्रतिलिपि "

13. After perusing the case diary as well as the statements recorded under Sections 161 and 164 CrPC, it is clearly established that the prosecutrix has been subjected to be raped by four persons i.e. Sahid, Noore Alam, Hariyale (present applicant), and Siddiqui. The Hon'ble Supreme Court in several judgments has clearly upheld that the anticipatory bail should not be granted by the court in heinous crime and particularly the crime against the woman. In the instant case, the prosecutrix has been raped by four persons not one but several times. Taking into consideration of the credible material on record to direct connect the applicant herein for commission of offence as alleged and the nature of offence committed by the applicant and the fact that the applicant is habitual offender and there is a serious threat to the prosecutrix and other witnesses, I do not find any cogent reasons to allow the instant bail application and accordingly, the present anticipatory bail application is dismissed.

Order Date :- 28.4.2025

Pratima

(Chandra Dhari Singh,J.)