



2025:AHC:158993

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No.
- 3572 of 2025

Anuj Sirohi @ Himanshu Sirohi

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	: Akhilendra Singh, Jitender Singh, Prabhat Kumar Singh
Counsel for Opposite Party(s)	: G.A., Zainul Abdin

Court No. - 32

HON'BLE CHANDRA DHARI SINGH, J.

1. Instant Criminal Misc. Anticipatory Bail Application has been filed under section 482 BNSS on behalf of applicant Anuj Sirohi @ Himanshu Sirohi under Section 482 of B.N.S.S. seeking anticipatory bail in Case Crime No. 0036/2023 under Section 376D, 506 IPC and 67 I.T. Act, Police Station - Thakurdwara, District - Moradabad till the trial of the aforesaid case.

2. Learned counsel appearing on behalf of applicant submitted that applicant is an innocent person and has not committed any offence as alleged in the FIR and no material has been collected by the investigating agency during the investigation against the petitioner. After completion of investigation, the charge sheet has been filed on 24.6.2023 before competent court.

3. Learned counsel appearing on behalf of the applicant submitted that on plain reading of the FIR, there is no allegation against the applicant for committing rape. It is further submitted that the prosecutrix has improved her version in the statement recorded under Section 161 and 164 Cr.P.C. only for purpose to falsely implicate the applicant as he is close friend of the co-accused Vijai Sirohi. It is also submitted that there is no evidence on the record to establish that the applicant has made any videography as alleged against him.

4. The arrest of the co-accused Vijay and 2 others was stayed by the Division Bench of this Court vide order dated 3.5.2023. During the said period the police has investigated the matter and filed the charge sheet for the offence punishable under Section 376D, 506 IPC and 67 D of I.T. Act. It is submitted that the petitioner/applicant has not misused or abused the protection granted by the Division Bench. It is further submitted that

the applicant is a man of clean antecedents and it is also undertaken that the applicant shall abide by all the terms and conditions as imposed by the Court while granting him anticipatory bail. There is no apprehension of the petitioner fleeing from justice. It is, therefore, stated that anticipatory bail be granted to the petitioner/applicant.

5. *Per contra*, Mr. S.K. Ojha, learned AGA appearing on behalf of Respondent-State vehemently opposed the instant anticipatory bail application and submitted that the applicant has been charged for commission of heinous crime under Section 376D of IPC. The applicant is also absconder and he has never cooperated with the investigating agency during the investigation. He has referred the statements u/s 161 Cr.P.C. and 164 Cr.P.C. of the prosecutrix and submitted that after plain reading of the statements there are sufficient materials/evidence on record to establish that he has committed the offence punishable under Section 376-D, 506 IPC and 67 IT Act.

6. Learned counsel appearing on behalf of the complainant vehemently opposed the instant anticipatory bail application and reiterates the contentions of Mr. S.K. Ojha, learned AGA. The charge sheet has been filed against the petitioner for offence punishable under section 376D, 506 IPC and 67 IT Act. He further states that the petitioner/applicant is accused of very serious offence punishable under section 376D IPC, therefore, anticipatory bail should not be granted to him. It is also submitted that the applicant has made video of the prosecutrix and sent it to her husband in support of his argument, he has relied on the statement of the husband under Section 161 Cr.P.C. It is further submitted that the applicant has also threatened to viral the said video in public by way of uploading the same on social media. In view of the facts and circumstances, the applicant does not deserve to be released on anticipatory bail and, therefore, his instant bail application is liable to be rejected.

7. Heard learned counsel appearing on behalf of the applicant, learned counsel appearing on behalf of the State and learned counsel appearing on behalf of the complainant and perused the material on record.

8. As per FIR version, there are no allegation of committing rape against the petitioner. Thereafter in statement recorded under Section 161 Cr.P.C., the prosecutrix has made the following statements:-

"बयान किया कि मेरा नाम दीपमाला उर्फ पूजा पुत्र देवेन्द्र सिंह R/O सैदपुर थाना बीबी नगर बु०शहर है। मेरी शादी दिनांक 11.05.2014 को प्रशान्त कुमार पुत्र महाराज सिंह ने साथ ग्रा० दुल्हापुर पट्टी जाट में हुयी थी। मैं मार्केटिंग तक काम करती है। मार्केटिंग के काम में प्लान देना होता है मेरे गांव में रहने वो विजय सिरोही पुत्र ज्ञानी सिंह निवासी ग्राम सैदपुर जिला बुलन्दशहर ने प्लान के लिए बुलाया जहाँ उसने मेरे फोटो खींचे लिए और जब मैं वापस अपने ससुराल आयी तो विजय सिंह ने मेरे फोटो मेरे पति को भेजने की धमकी देकर मुझे बुलाया दिनांक 15.08.22 को मैं उसकी धमकी से डरकर उसके पास चली गयी वहाँ नितिन मुझे कार में बैठाकर OYO होटल ले गया जहाँ उस होटल में विजय, मनीष, अनुज पहले से ही मौजूद थे वहाँ नितिन मुझे एक कमरे में ले गया वहाँ नितिन ने रेप किया और नितिन ने विडियो बनाई मनीष और विजय सिरोही भी वही मौजूद थे। उसके बाद मैं अपनी ससुराल आयी तो ये लोग मुझे वीडियो भेजकर ब्लैक मेल करने लगने मैंने डर की वजह से किसी को कुछ नहीं बताया था अब कुछ दिन पहले सागर नाम के लड़के ने मुझे फोटो भेजकर ब्लैक मेल किया और मिलने के लिए बुलाया और धमकी दी की यदि तू नहीं आयी तो वो विडियो और फोटो मेरे पति को भेज देगे। बहुत हिम्मत करके ये बात मैंने अपने पति को बतायी। यही मेरा बयान है।"

9. After reading of the aforesaid statement of the prosecutrix, the allegation of rape was made only against co-accused Vijay Sirohi. The role of the present applicant/petitioner is only that he was present at the site.

10.. The statement recorded under Section 164 Cr.P.C. of the prosecutrix is also quoted below:-

"अवलोकन वादिनी/पीडिता अन्तर्गत धारा 164 सीआरपीसी- पीडिता ने सशपथ बयान दिया कि, मेरा नाम दीपमाला उर्फ पूजा D/O देवेन्द्र सिंह उम्र 26 वर्ष R/O दुल्हापुर पट्टी ठाकुरद्वारा मुरादाबाद है। मैं मार्केटिंग का काम करती हूँ। यह काम मैं सन् 2012 से करती हूँ। इसी काम के दौरान मेरी मुलाकात विजय सिरोही से हुई, विजय सिरोही को मैं अपनी शादी से पहले से जानती हूँ। वो मेरा शादी से पहले वायफ्रेन्ड था। मैं अपनी शादी के बाद भी उससे काम को लेकर मिलती रही हूँ। उसके पास हमारे शादी से पहले के फोटो है। वो फोटो इसने सन् 2019 में वायरल कर दिये मैंने इससे कहा कि अब मुझे तुझसे कोई बात नहीं करने वाली चो इसने कहा अगर तू मुझसे बात नहीं करेगी तो तेरे पति को फोटो दिखा दूंगा। मार्च 2019 में मैं उससे मिलने मेरठ गई हम CCS UNIVERSITY में मिले थे। मैं अपने भाई से बताकर विजय के साथ आ रही थी। मैं अपने बेटे को भाई के पास छोड़कर विजय के साथ उसकी गाड़ी में आयी थी। मुझे उसपर पूरा भरोसा था मैं उसकी गाड़ी से होटल में गई वह मुझे खाना खिलाने के वहाँ लेकर गया वहाँ उसकी पहले से सैटिंग थी। उसने वहाँ पर मेरे साथ जबरन बलात्कार किया मनीष ने हमारी विडियो बनाई फिर मैं अपने घर आ गई उसके बाद मुझे विजय ने विडियो वायरल करने की धमकी दी मैंने अपने घर पर किसी को नहीं बताया मैं अगस्त 2022 में उससे फिर मिलने गई 15.08.2022 को मैं मिलने गई थी। नितिन नाम का लड़का मुझे एक OYO होटल में लेकर गया वहाँ पर अनुज, मनीष और विजय पहले से मौजूद थे। वहीं पर अनुज और नितिन ने मेरा रेप किया और विडियो भी बनाई। जब इन्होंने मुझे धमकी देनी बन्द नहीं की तो मैंने अपने पति को सारी बात बताई जिसके बाद हमने थाने में अपनी रिपोर्ट लिखवाई है। मुझे इन्साफ चाहिए बस यही मेरा बयान है। सुनकर तस्दीक किया पीडिता बोले जाने पर मेरे द्वारा शब्द व शब्द बयान अंकित किया गया। हस्ताक्षर अंग्रेजी अपठित दिनांक 23.01.2023 हस्ताक्षर दीपमाला हिन्दी पठित पीडिता मैंने बयान पढ़ा बयान ठीक है। दीपमाला बयान पीडिता को पढ़कर सुनाया स्वतंत्र सहमति दर्ज करा बयान स्वीकार किया। हस्ताक्षर अंग्रेजी अपठित दिनांक 23.01.2023 | CJ.JD.N NC CR NO.03"

11. After perusal of the aforesaid statements of the prosecutrix indicates several material contradiction in the statements.

12. On query, learned counsel for the State submitted that video and photographs which have been procured from the mobile phone of the accused persons has already been sent for FSL but the FSL report has not been received yet.

13. The applicant has filed Criminal Misc. Writ Petition No. 6923 of 2023 for quashing the FIR dated 21.01.2023 giving rise to Case Crime No. 0036 of 2023 under 147, 452, 354, 376-D, 506 IPC and 67 D of IT Act, After hearing the parties, the Division Bench of this Court has stayed the arrest of the petitioner till submission of police report under Section 173(2) Cr.PC. This is not a case of the State that during the said period between the date of stay order dated 3.5.2023 and till filing of the charge sheet, accused has tried to influence or temper any evidence. Cognizance has already been taken by the Court concerned and trial has also been commenced.

14. The parameters for granting anticipatory bail have been succinctly laid down in **Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694** wherein the Supreme Court has held as under:-

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail.

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into

consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available.” (emphasis supplied).

15. The said principle has been affirmed by the constitution Bench of the Supreme Court in **Sushila Aggarwal and Ors v. State (NCT of Delhi) and Anr (2020) 5 SCC 1**.

16. No doubt, the petitioner is accused of a very serious offence punishable under Section 376 D IPC. But other aspects can not be ignored while adjudicating the instant case i.e. *firstly*, there are material contradiction in the statement of the prosecutrix, *secondly*, the Division Bench of this Court has already granted stay on arrest of the accused till the filing of the charge sheet. *Thirdly*, he has never misused the arrest stay order and cooperated with the investigation and now investigation has been completed and charge sheet has been filed. *Fourthly*, the cognizance has been taken by the court and trial has already been commenced. *Fifthly*, he is man of clean antecedents and undertaken to cooperate in trial. There is no apprehension of the applicant/petitioner fleeing from justice.

17. The State and complainant has taken serious objection that since NBW has been issued against the petitioner/applicant, he is not entitled for any leniency by way of granting anticipatory bail. Taking into consideration of the said objection, I am of the view that the Supreme Court and other High Courts have held that where the proceedings under Section 82/83 and 299 of Cr.P.C. (84/85 and 335 of the BNSS) have been initiated against the accused and/or he has been declared proclaimed offender, the application for anticipatory bail would be maintainable. However, Such consideration and grant of anticipatory bail to the accused would depend upon the gravity and seriousness of the offence involved therein.

18. Taking into consideration of the discussion, legal propositions in foregoing paragraphs, I am inclined to allow the instant anticipatory bail application. Accordingly, it is allowed. In the event of arrest, the applicant **Anuj Sirohi @ Himanshu Sirohi** be released on anticipatory bail in the aforesaid case crime till the conclusion of the trial on furnishing a personal bond of Rs.1,00,000/- (Rs. One Lakh) with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall make himself available for trial before the Court concerned as and when date fixed.

(ii) The applicant shall provide his mobile number and it is directed to always keep open his mobile phone 24 hours and cooperate in the trial and if Court concerned requires some document, the applicant will provide the same to the IO/Court concerned.

(iii) 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 from disclosing such facts to the Court or to any police officer;

(iv). The applicant shall not leave India without previous permission of the Court and if he has pass port, the same shall be deposited by him before the court concerned.

19. In default of any of the conditions by the applicant, the I.O. and learned AGA are at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

20. In view of the aforesaid observations/direction, the instant application is disposed off.

21. It is made clear that observations made in the instant order is only for the adjudication of the present application.

September 9, 2025
S.K.S.

(Chandra Dhari Singh,J.)