

05.12.2022
Serial no.2
Aloke

CRM (A) 2976 of 2022

In re : An Application for Anticipatory Bail under Section 438 of the Code of Criminal Procedure in connection with Gazole Police Station Case No. 386 of 2022 dated 23.05.2022 under Sections 417/376/506/34 of the Indian Penal Code.

-And-

In the matter of : **Kunal Chatterjee**

... .. Petitioner

Mr. Sekhar Kr. Basu, Sr. Advocate

Mr. Diptangshu Basu, Advocate

... .. For the Petitioner

Mr. Ranabir Roy Chowdhury, Advocate

Mr. Sandip Chakraborty, Advocate

... .. For the State

Mr. Mukunda Lal Sarkar, Advocate

Mr. Bikram Mandal, Advocate

... .. For the de facto complainant

The petition for anticipatory bail is taken up for consideration subsequent to the order dated November 16, 2022 passed by the Hon'ble Supreme Court in SLP (Cri) No. 6686 of 2022.

By an order dated June 23, 2022, prayer for anticipatory bail of the petitioner was allowed.

A special leave petition was carried against such order being SLP (Cri) No. 6686 of 2022.

Such special leave petition was disposed of by an order dated November 16, 2022 setting aside the order granting anticipatory bail to the petitioner on the ground that the de facto complainant was required to be extended an opportunity of hearing and to oppose the bail prayer.

The Hon'ble Supreme Court directed that the application for anticipatory bail should be taken up for consideration on December 5, 2022.

The factum of the order dated November 16, 2022 of the Hon'ble Supreme Court was brought to our attention on behalf of the petitioner on November 21, 2022 when we directed that the matter be placed as 'to be mentioned' on November 22, 2022.

On November 22, 2022, the de facto complainant was not present.

We directed the matter to be placed today in terms of the order of the Hon'ble Supreme Court dated November 16, 2022.

The de facto complainant is represented. Vakalatnama filed in Court on behalf of the de facto complainant be taken on record.

Learned Advocate appearing for the de facto complainant submits that the petitioner approached this Hon'ble Court with uncleaned hands. The petitioner suppressed the fact that the prayer for anticipatory bail made by the petitioner before the Sessions Judge was rejected on June 14, 2022.

The factum of moving the Sessions Judge and the order of the learned Sessions Judge were not placed before this Hon'ble Court.

That apart, learned Advocate appearing for the de facto complainant submits, the petitioner is guilty of violation of the order granting anticipatory bail by the Court on June 23, 2022. The relatives of the petitioner threatened the de facto complainant and that a first information report was lodged with regard thereto.

Learned Advocate for the State draws the attention to the statement of the de facto complainant recorded under Section 164 of the Code of Criminal Procedure. He submits that he does not have instruction with regard to the subsequent conduct of the petitioner as contended by the de facto complainant.

Learned Senior Advocate appearing for the petitioner is requested to draw the attention of the Court to the materials in the petition from which, it can be garnered that the petitioner approached the Sessions Judge for anticipatory bail. He submits that such fact is not pleaded in the petition. He submits that the application for anticipatory bail by the learned Sessions Judge was dismissed as not pressed.

The first paragraph of the petition for anticipatory bail filed before us contains a positive assertion made on behalf of the petitioner that, the petitioner did not approach this Hon'ble Court nor any other Court with a plea for anticipatory bail. The petition for anticipatory bail of the petitioner is affirmed by his father.

The deponent stated in the affidavit verifying the petition for anticipatory bail that the statements made in the first paragraph of such petition is true to his knowledge.

The deponent of the petition is the father of the petitioner. It is inconceivable that he was unaware of the fact that the petitioner approached Sessions Judge with a prayer for anticipatory bail which was dismissed as not pressed. Such fact was suppressed from this Hon'ble Court.

Moreover, the deponent made a false assertion that the petitioner did not approach any other Court with a prayer for anticipatory bail.

Post bail misconduct of the petitioner is another aspect which ought to be fallen into consideration. There is a first information report as against the relative of the petitioner.

In such circumstances, prayer for anticipatory bail of the petitioner is rejected.

Mere rejection of the prayer for anticipatory bail will not suffice in the facts and circumstances of the present case. The petitioner and the deponent of the petition should be placed on terms.

The police will initiate appropriate proceeding against the petitioner and the deponent for suppressing material facts and making false statements to the Court knowing the same to be false.

Such proceeding be initiated within seven days from days.

Needless to say in view of the rejection of the prayer for anticipatory bail on the ground as noted above, the protection which was to continue till date no longer remains.

CRM (A) 2976 of 2022 is disposed of accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)