

Court No. - 71

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 7907 of 2023**

Applicant :- Ajay Yadav

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Hari Prakash Tiwari

Counsel for Opposite Party :- G.A.,Nehal Beg

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Mr. Hari Prakash Tiwari, learned counsel for the applicant, learned Additional Government Advocate for the State and Mr. Nehal Beg, learned counsel for the informant/victim.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.49 of 2019, under Sections 376, 313, 504, 506 IPC and Section 3/4 of Protection of Children From Sexual Offences (POCSO) Act, 2012, Police Station Phoolpur, District Azamgarh.

3. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case just to harass the applicant in fact no such incident has taken place as alleged in the impugned FIR. The applicant has never committed any offence as alleged in the impugned FIR. As per allegation, the applicant has committed rape upon the victim in the year 2011. He further submits that the incident is alleged to have taken place in the year 2011 whereas the impugned FIR has been lodged on 11.03.2019 i.e. about 8 years of the alleged incident but there is no plausible explanation regarding huge delay. He further submits that the victim in her statement recorded under Section 164 Cr.P.C. has stated that applicant has made physical relation with her. The victim herself has admitted that she has made physical relation with the applicant meaning thereby the victim is a consenting party. He further submits that the victim was medically examined on 28.03.2019 in which the victim was found above 18 years and as per supplementary medical report, no spermatozoa was seen. He further submits that in the alleged incident, the applicant and his father has been implicated on false and fabricated ground. The co-accused Dayalu Yadav has already been granted anticipatory bail by this Court vide order dated 11.04.2023 passed in Criminal Misc. Anticipatory Bail Application No.13001 of 2022, copy of the

same has been filed as Annexure No.8 to the affidavit.. Prime facie no alleged offence is made out against the applicant. The applicant is having no previous criminal history as has been mentioned in paragraph 26 of the affidavit. He further submits that applicant has apprehension of imminent arrest and in case, the applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

4. Learned A.G.A. as well as learned counsel for the informant/victim have vehemently opposed the prayer for anticipatory bail of the applicant.

5. Perusal of record shows that there are material contradictions in the statement of the victim recorded under Sections 161 and 164 Cr.P.C. As per version of the FIR, it has been mentioned that the applicant made physical relation with the victim in the year 2012 whereas in the statement under Section 161 Cr.P.C. the victim has stated that applicant made physical relation in the year 2013.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, he is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98***. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

7. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant-**Ajay Yadav**, involved in the aforesaid case crime be released on anticipatory bail on furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(i) The applicant shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation.

(ii) 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.

(iii) The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(iv) The applicant shall surrender his passport, if any, to the concerned Court forthwith. His passport will remain in custody of the concerned Court.

(v) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

(vi) In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98*.

(vii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against his in accordance with law.

8. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

9. With the aforesaid observations/ directions, the application stands **disposed of**.

10. Before parting with the case, it would be appropriate to observe that in the society, there are certain false FIR under the POCSO as well as SC/ST Act is lodged against innocent persons ruined their image in the society just for taking money from the State. It is very unfortunate that now a days, in maximum cases the women is using it as a weapon just to grab money, which should be stopped.

11. Looking to the rampant and daily increasing prevalence of such type of crimes of sexual violence, I think that it is high time that the State of U.P. and even the Union of India should become sensitive to this grave issue.

12. Under the circumstances, it is directed that in case it is found that the FIR lodged by the victim is false, then criminal proceeding under Section 344 Cr.P.C. against the victim shall be initiated after conducting inquiry. It is also directed that in case any money is given by the State to the victim, the same shall also be recovered from the victim.

Order Date :- 10.8.2023/Ajeet