

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12763 of 2022

Applicant :- Usman

Opposite Party :- State Of Uttar Pradesh And 3 Others

Counsel for Applicant :- Akhilesh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Suresh Kumar Gupta,J.

This is second anticipatory bail application. The first anticipatory bail application was rejected by this Court for want of prosecution.

Heard Sri Akhilesh Kumar, learned counsel for the applicant, and Sri Pankaj Kumar Tripathi, learned A.G.A. for the State and perused the material on record.

The present bail application has been filed on behalf of applicant Usman under Section 438 of the Code of Criminal Procedure, with a prayer to release him on anticipatory bail in Case Crime No. 223 of 2021, for offence punishable under Section 354-D of the Indian Penal Code and Section 7/8 of Protection of Children from Sexual Offences Act, 2012 registered at Police Station- Gagalhedi, District- Saharanpur, after rejecting the anticipatory bail application of the applicant by Special Judge (POCSO Act)/ Additional Sessions Judge, Court No. 13, Saharanpur vide order dated 04.03.2022.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. As per allegations of the first information report which has been lodged on 01.09.2021 under Sections 452, 307, 323, 376, 511 and 504 of I.P.C. and Section 67-A of the Information Technology Act and Section 7/8 of Protection of Children From Sexual Offences Act against Basarat and Naunisa (sister of the applicant) stating therein that on 27.08.2022 at about 02:30 P.M. when the victim was alone in her house Basarat and Naunisa entered into the house of the first informant, Basarat (another brother of the applicant) attempts to rape her and upon raising alarm and objection, Basarat tries to strangle her with sardines (Chunni). It is further submitted that the applicant has not named in the first information report and during the course of investigation his name has surfaced on the basis of second statement of the victim as well as statements of other prosecution witnesses. It is further submitted that the first information report has been

lodged on the basis of baseless and false allegation and the investigation is pending against the applicant under Section 354-D of I.P.C. and Section 7/8 of POCSO Act. It is further submitted that the mother of the applicant has lodged first information report as Case Crime No. 247 of 2021, under Sections 354, 354-B, 147, 148, 152, 307, 504, 506, 325 of I.P.C. and Section 5/6 of POCSO Act against the family members of the victim on the basis of an application under Section 156(3) of Cr.P.C. It is further submitted that there is no date and time of the alleged incident with regard to molestation of the victim has been mentioned in the F.I.R.

It is further submitted that in the statements of the victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C. as well as further statement of victim, no specific role has been assigned against the applicant either outraging her modesty or inflicting injury to her. Further there are several contradictions in the statements of the victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C. It is further submitted that the applicant is no more required for custodial interrogation. The applicant has no criminal history and he has not undergone any imprisonment after conviction by any court of law in relation to any cognizable offence previously. It is further contended that the applicant is ready to participate in the investigation.

Learned A.G.A. opposed the prayer for anticipatory bail.

Without expressing any opinion on the merits of the case, considering the nature of accusation and the fact that they have no criminal antecedent, the applicants are entitled to be released on anticipatory bail in this case.

In the event of arrest of the **applicant (Usman)** shall be released on anticipatory bail till the submission of police report, if any, under section 173 (2) Cr.P.C. or till submission of charge sheet before the competent Court on their furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Station House Officer of the police station concerned with the following conditions:-

- (i) the applicant shall make themselves available for interrogation by a police officer as and when required;
- (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 them from disclosing such facts to the Court or to any police office;
- (iii) the applicant shall not leave India without the previous

permission of the Court and if he has passport the same shall be deposited by them before the S.S.P./S.P. concerned.

In default of any of the conditions, the Investigating Officer is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicants.

The Investigating Officer is directed to conclude the investigation of the present case in accordance with law expeditiously preferably within a period of three months from the date of production of a certified copy of this order independently without being prejudice by any observation made by this Court while considering and deciding the present anticipatory bail application of the applicants.

The applicant is directed to produce a certified copy of this order, before the S.S.P./S.P. concerned within ten days from today, who shall ensure the compliance of present order.

The anticipatory bail application is, accordingly, **disposed of**.

Order Date :- 15.12.2022

Virendra