

**Court No. - 80**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 12484 of 2022

**Applicant :-** Shailendra Kumar

**Opposite Party :-** State Of U.P. And 2 Others

**Counsel for Applicant :-** Raghuvansh Misra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Subhash Chandra Sharma,J.**

Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the material placed on record.

This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.04 of 2021, under sections 376, 323, 504, 506, 406 I.P.C. & Section 67(A) of the Information Technology Act, Police Station Mahila Thana, District Auraiya, during the pendency of trial.

Facts in brief are that the applicant is doctor and the informant/victim came to know him through facebook when he was a medical student. Thereafter, the applicant used to come to her house and his father also came there 2-3 times. In the month of February 2018 father of the applicant came to her house and proposed marriage of the applicant with the victim to her mother after completion of education. Later on, the applicant took the victim to Ajmer and Pushkar for darshan where he stayed in a hotel by making entry in the hotel record as husband and wife. There, he administered some obnoxious material and established physical relations with her, prepared video and started blackmailing her by threatening to make them viral on social media. She got frightened that was the reason he established physical relations with her till January 2020 when she objected applicant assaulted her. In this regard victim made complaint to the father of the applicant but he also ignored the same. Applicant took about Rs.3 lakhs from the victim and a golden chain was also given by her mother to the applicant. Later on the applicant entered into marriage with some other lady namely Sikha Tyagi who also threatened her as a result the present F.I.R. was lodged. After investigation charge sheet has been submitted by the police.

It is submitted that in this case applicant is innocent and has falsely been implicated by the informant/victim with false allegation of committing rape. The victim was major at the time of alleged incident and she was in friendly relation with the applicant. After proposal of marriage by the father of the

applicant, she went with the applicant to several places where both of them lived as husband and wife as a result physical relations were also established with her consent. Further submitted that this process continued for a period of three years but she never objected in this regard. The applicant neither prepared any obscene video nor threatened her to make them viral. During investigation no such material has been collected by the I.O. It is also submitted that there is no any medical report on record to show that any force or violence was used by the applicant against the person of the victim. The present F.I.R. was lodged after inordinate delay which infers that victim gave her consent for physical relations voluntarily and then physical relations were established consensually between both of them, therefore, such consent cannot be said to be obtained under misconception. It is also submitted that prior to the promise to marry she was unmarried and major though the subsequent circumstances were beyond his control. It is also submitted that during investigation no offence regarding administration of obnoxious substance was found that was the reason Section 328 I.P.C. was dropped. What circumstances led to the applicant to enter into marriage with some other lady namely Sikha Tyagi are not to be considered at the time of considering the bail of the applicant but it is a matter of merit which would be seen during trial. It is also submitted that during investigation the applicant was granted anticipatory bail till submission of police report u/s 173(2) Cr.P.C. which he has not misused. Now applicant is ready to face the trial but in pursuance of the process of the court there is apprehension of imminent arrest against the applicant. In case, the applicant is released on bail, he would not misuse the liberty of bail and would cooperate with the trial. He relied his arguments on the judgment passed by the Hon'ble Apex Court in the case of ***Pramod Suryabhan Pawar vs. State of Maharashtra (2019) 9 SCC 608***. which is related to an order passed u/s 482 Cr.P.C. for quashing of F.I.R.

Learned A.G.A. has opposed the prayer for anticipatory bail and urged that in this case though the victim was in friendly relations with the applicant but there was no physical relation between both of them until there was promise to marry on the part of the applicant before her mother in presence of his father, the applicant took her with him on several places where physical relations were established by him. In the register of the hotel the applicant entered the name of the victim as his wife and after administering obnoxious substance on her he established physical relations with her though she did not give her consent. Some obscene videos were prepared by the applicant. Later on, he started blackmailing the victim by threatening her to make them viral and under this impression he

continued to establish physical relations with her till the period of three years. It is also urged that regarding this fact she made complaint to the father of the applicant but it went in vain. Afterwards, the applicant was going to enter into marriage with some other lady namely Sikha Tyagi and as this fact came into the knowledge of the victim she lodged the present F.I.R. Statement of the victim was recorded u/s 164 Cr.P.C. before the learned Magistrate in which she asserted the aforementioned facts. Thus, it cannot be said that her consent was given voluntarily but it was under misconception of fact. He relied his arguments on the judgment passed on similar facts by Hon'ble the Apex Court in the case of **Anurag Soni vs. State of Chhattisgarh (2019) 13 SCC 1**. In this way, prima facie offence u/s 376 I.P.C. is established against the applicant and he is not entitled for anticipatory bail.

Considering the facts and circumstances of the case, submissions made by learned counsel for the applicant as well as learned A.G.A., perusal of record and the mala fide intention on the part of the applicant from the very outset, there appears no ground to grant anticipatory bail in favour of this applicant.

Accordingly, this anticipatory bail application is, hereby, ***rejected.***

**Order Date :- 2.2.2023**

Ashok Gupta