

Angad @ Neeraj vs State Of U.P. And Another on 4 November, 2022

Author: Suresh Kumar Gupta

Bench: Suresh Kumar Gupta

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 7505 of 2022

Applicant :- Angad @ Neeraj

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Brijesh Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Suresh Kumar Gupta,J.

As per office report dated 09.10.2022, notice was duly served upon the complainant but no one has put in appearance on behalf of the complainant.

Heard learned counsel for the applicants and learned Additional Government Advocate for the State.

The present anticipatory bail application under Section 438 Cr.P.C. has been filed for grant of anticipatory bail as the accused-applicant is apprehending his arrest in connection with Complaint Case No. 21 of 2021, under Sections 363 & 366 IPC and Section 7/8 of the Protection of Children from Sexual Offences Act, 2012, Police Station Mungara Badshahpur, District Jaunpur.

Learned counsel for applicants has submitted that the applicant has been falsely implicated in this case and he has not committed any offence as alleged by the prosecution. Further submission is that father of the prosecutrix filed a complaint before the Special Judge (Protection of Children from Sexual Offences Act) with the allegation that the applicant kidnapped his minor girl regarding which the complaint was filed before the court concerned. Thereafter the Statement of the complainant and witnesses under Section 200 Cr.P.C. and 202 Cr.P.C. were recorded respectively. On the basis of statement of PW-1 and PW-2, summoning order was issued against the applicant.

The main contention of learned counsel for applicant is that prosecutrix is the legally wedded wife of the applicant. Both of them have solemnized marriage and now blessed with a child. Although in complaint as per allegation, the victim is a minor but she voluntarily entered into the relationship with the applicant and blessed a child. The said marriage is duly registered. Further submission is that the applicant is ready to face trial. There is apprehension of the applicant to arrest. If the applicant is granted anticipatory bail, he will never misuse the same. In support of their submission, learned counsel for the applicant has relied upon the judgement of Hon'ble Apex Court in the case of Aman Preet Singh vs. C.B.I. through Director, AIR 2021 Supreme Court 4154.

Learned Additional Government Advocate has vehemently opposed the prayer for anticipatory bail to the applicant. Thus, the anticipatory bail application of the applicant is liable to be rejected.

I have considered the rival submissions advanced by learned counsel for the parties and perused the entire material available on record.

The Hon'ble Supreme Court in the case of Aman Preet Singh (Supra), the Court has observed as under:

"10. Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail.

11. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

In Aman Preet Singh (supra), the Court has clearly held that if a person, who is an accused in a non-bailable/cognizable offence, was not taken into custody during the period of investigation, in such a case, it is appropriate that he may be released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him

to be released on bail.

Considering the facts and circumstances of the case as well as submissions advanced by learned counsel for the parties, I am of the opinion that it is a fit case for grant of bail to the applicant.

Accordingly, the anticipatory bail application is hereby allowed.

Let the applicant (Angad alias Neeraj), be released on bail by the trial Court till conclusion of trial on furnishing a personal bond and, two sureties each in the like amount to the satisfaction of the trial Court concerned with the following conditions:

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when 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;

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code. The applicants shall cooperate in the investigation;

(iii) In case, the applicant misuse the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicants fails to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him in accordance with law, under Section 174-A of the Indian Penal Code; and

(iv) 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 their bail and proceed against him in accordance with law.

Order Date :- 4.11.2022 Virendra