

Rafeeq vs State Of U.P. And 3 Others on 22 August, 2023

Author: Shekhar Kumar Yadav

Bench: Shekhar Kumar Yadav

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:169219

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 9504 of 2023

Applicant :- Rafeeq

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

Counsel for Applicant :- Akhilesh Srivastava, Saksham Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Learned A.G.A. has pointed out that notice has been served upon the informant. Despite, notice has been served, none present on behalf of the informant.
2. Heard Sri Akhilesh Srivastava, learned counsel for the applicant and learned Additional Government Advocate for the State as well as perused the material available on record.
3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.205 of 2022, under Sections 147, 323, 354, 341, 506 I.P.C. and Section 7/8 POCSO Act, P.S.- Chharra, District- Aligarh.

4. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that earlier, the mother of the victim lodged an FIR against the applicant under Section 498-A I.P.C. and Section 12 of Domestic Violence Act. He submitted that the victim has solemnized her marriage to another person on 24.03.2023, in which the age of the victim is given as 18 years, copy of the Nikahnama is annexed as Annexure No.10 to the affidavit. He submitted that charge sheet has been filed on 11.04.2022 and the court below has taken cognizance on 22.03.2023, thereafter, the applicant moved anticipatory bail application before the court below which was rejected vide order dated 01.08.2023, hence, the present anticipatory bail application. He submitted that no medical was conducted. The applicant is having no previous criminal history as has been mentioned in paragraph 24 of the affidavit. Learned counsel for the applicant further submits that applicant has apprehension of imminent arrest and in case, applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. has opposed the prayer for anticipatory bail of the applicant. He has submitted that in view of the seriousness of the allegations made against the applicant, she is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

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-Rafeeq, 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 him 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 allowed.

Order Date :- 22.8.2023 Krishna*