

VERDICTUM.IN

Court No. - 85

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 3285 of 2022

Applicant :- Babu Khan

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Aditya Prasad Mishra

Counsel for Opposite Party :- G.A.,Anay Kumar Srivastava

Hon'ble Ajit Singh,J.

Heard learned counsel for the applicant and learned AGA for the State.

The instant anticipatory bail application has been filed on behalf of the applicant, Babu Khan with a prayer to release him on bail in Case Crime No. 59 of 2018, under sections 376, 511, 504 and 506 I.P.C., P.S. Janakpuri, district-Saharanpur.

Prior notice of this bail application was served in the office of Government Advocate and as per Chapter XVIII, Rule 18 of the Allahabad High Court Rules and as per direction dated 20.11.2020 of this Court in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 8072 of 2020, Govind Mishra @ Chhotu Versus State of U.P., hence, this anticipatory bail application is being heard. Grant of further time to the learned A.G.A. as per Section 438 (3) Cr.P.C. (U. P. Amendment) is not required.

The first information report was lodged by the alleged victim against her own father-in-law-Babu Khan, the present accused and other co-accused Mohammad Haroon. It was alleged that on 01.03.2008 at about 6:00 p.m the applicant along with co-accused came at the house of victim's brother when she was alone and asked the whereabouts of her brother Mustaqeem and when the victim said that her brother is not at home then father-in-law of the victim started abusing her. It was further mentioned in the FIR that the alleged victim tried to stop him then she was pushed on the bed by him, then both the accused tried to rape her.

Learned counsel for the applicant has contended that similarly placed other co-accused Mohammad Haroon has been granted anticipatory bail by this Court in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 3319 of 2022, copy of the bail order produced by learned counsel for the applicant is taken on record. The case of the applicant stands on identical footing, hence the applicant is also entitled for anticipatory bail on the ground of parity. The applicant is having definite apprehension that he may be arrested by the police any time.

Learned AGA has opposed the prayer for anticipatory bail of the applicant, but does not dispute the claim of parity.

Without expressing any opinion on the merits of the case and considering the nature of accusations and the antecedents of the applicant, considering the gravity of the offence, considering that it is quite unnatural that a father-in-law shall commit rape of his own daughter-in-law along with some other person in our Indian culture, considering that the accusation has been made falsely with the object of injuring or humiliating his reputation in the society., considering the Constitution Bench judgment of

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the Apex Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98* and in the case of *Satendra Kumar Antil vs. Central Bureau of Investigation* passed in Special Leave to Appeal (Criminal) No. 5191 of 2021

In the event of arrest of the applicant, he shall be released on anticipatory bail on his furnishing a personal bond with two sureties each in the like amount of Rs. 25,000/- to the satisfaction of the Station House Officer concerned with the following conditions:-

1. The applicant shall not leave India during the currency of trial without prior permission from the concerned trial Court and will co-operate in investigation.
2. The applicant shall surrender his passport, if any, to the concerned trial Court forthwith. His passport will remain in custody of the concerned trial Court.
3. That 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;
4. 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.
5. In case, the applicant misuses the liberty of bail, the trial 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*.

Order Date :- 18.5.2022

Faridul