

In Chamber

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 4583 of 2020

Applicant :- Pratap

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

Counsel for Applicant :- Ravi Kumar Singh, Mohit Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh-I,J.

Heard Sri Ravi Kumar Singh, learned counsel for the applicant through Video Conferencing. Sri G.P. Singh, learned A.G.A. for the State is present and perused the record.

This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No. 314 of 2020 under section 328, 342, 323, 504, 506, 376D, 120B IPC, Police Station Sihanigate, District Ghaziabad, during the pendency of the investigation.

The prosecution version as per FIR is that the prosecutrix had come to her parents' house where co-accused Mukesh was her neighbour. On 6.2.2019 at about 1.30 P.M. the informant/prosecutrix had gone with Daichi (wife of co-accused Mukesh) to purchase some articles and at that time all of a sudden a vehicle came from behind and stopped beside her and from the vehicle co-accused Mukesh got down and soon thereafter co-accused Mukesh smothered her mouth and she was dragged inside the vehicle thereafter she was administered some stupefying drugs, after consuming it she fainted and thereafter she was taken to a house near the Railway Line where she was kept for few days. The co-accused Mukesh and one another person to whom the co-accused Mukesh was addressing as his Jija Pratap, both together had committed rape upon her inside the room. The wife of Pratap had also beaten her badly at one night and told her that her career would be spoiled and she would not be in a position to show her face to public and she would not be kept by the people of her matrimonial home and thereafter she was threatened to be sold and thereafter one day a child came who disclosed the name of the village of Alam who was carrying a telephone by which stealthily the informant telephoned her mother. The hands and legs of the informant were tied by rope and she was carried to matrimonial home of Daichi where the brother of Mukesh i.e. Babban told her to marry him forcibly and she was closed inside in a room, there, she refused to marry him and, thereafter brother of co-accused, Babban had committed rape upon her

forcibly, right then a telephone call was received from Alam which was of sister of co-accused, Mukesh that police had come there and, thereafter on 23.09.2019 at about 1:00 p.m., the co-accused, Mukesh and the accused applicant, Pratap had given her some stupefying drugs and had taken her to Farrukhabad and thereafter somebody had telephoned her brother who took her home and, thereafter the informant's family member telephoned to police at 100 number but no action was taken by the police.

Learned counsel for the applicant has argued that the victim has falsely implicated the accused applicant because of there being some dispute with Mukesh who was a neighbour of the prosecutrix in her matrimonial home. The prosecutrix has refused to get herself medically examined as is evident from the evidence adduced at page no. 28 of the paper book. He has no criminal history. Reason of false implication has been mentioned in para nos. 29, 30 and 31 of the Affidavit which indicates that prosecutrix had some dispute with co-accused, Mukesh on account of money pertaining to supply of milk and that the family members of prosecutrix had earlier filed an F.I.R. being Crime No. 1634 of 2010 under Section 354 I.P.C., P.S. Sihani Gate, District Ghaziabad which was later on compromised by them after taking illegal money and the said F.I.R. has been annexed as Annexure 9 to the Affidavit. It is further argued that the F.I.R. has been lodged after delay of about five months as the occurrence is stated to have taken place on 6.09.2019 while the F.I.R. has been filed on 3.02.2020. He has apprehension of imminent arrest. If released on bail he would not misuse the liberty and would co-operate with the investigation.

Learned A.G.A. has vehemently opposed the prayer for granting bail and has stated that in statement under Section 164 Cr.P.C., the victim/prosecutrix has clearly supported the prosecution version to which learned counsel for the applicant has controverted and has stated that the victim/prosecutrix has stated in F.I.R. that co-accused, Mukesh and Babban had committed rape upon her in village, Alam while in her statement under Section 164 Cr.P.C., she has stated that all the three accused i.e. Mukesh, Pratap and Babban had committed rape upon her in village, Purthi, therefore, there is variation in the place of occurrence also in statement under Section 164 Cr.P.C.

Looking to the fact that the F.I.R. is delayed by more than five months without any justifiable reason and earlier conduct of the family members of the victim also does not inspire confidence with regard to filing of F.I.R. and later on same is stated to have

been compromised and also looking to the fact that the applicant has no criminal history, taking into consideration the gravity of accusation and there being no possibility of his fleeing from justice, without expressing any opinion on the merits of the case, the applicant is entitled to be released on anticipatory bail in this case.

In the event of arrest of the applicant **Pratap** involved in the aforesaid case shall be released on anticipatory bail till the submission of police report if any under section 173 (2) Cr.P.C. before the competent Court on his furnishing a personal bond of Rs. 50,000/- 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 himself 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 him/her/them from disclosing such facts to the Court or to any police officer;

(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 him before the S.S.P./S.P. concerned.

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

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 copy of this order downloaded from official website of High Court Allahabad and verified by the learned counsel for the applicant, independently without being prejudiced by any observation made by this Court while considering and deciding the present anticipatory bail application of the applicant.

The applicant is directed to produce a copy of this order downloaded from official website of High Court Allahabad and verified by the learned counsel for the applicant before the S.S.P./S.P. concerned within ten days from today, who shall ensure the compliance of present order.

Order Date :- 18.8.2020

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