

Court No. - 14

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 4938 of 2021

Applicant :- Mohammad Ali

Opposite Party :- State Of U.P. & Anr.

Counsel for Applicant :- A.Z. Siddiqui

Counsel for Opposite Party :- G.A.

Hon'ble Chandra Dhari Singh,J.

The present application under Section 438 of Cr.P.C. has been filed by the accused applicant seeking bail in anticipation of his imminent arrest in Case Crime No.448 of 2020 under section 67-A, 66-E of the Information Technology Act 2008 and Section 507 IPC, P.S. Thakurganj, District Lucknow.

The instant anticipatory bail application has been moved before this Court directly instead of approaching first to Sessions Court, Lucknow because on pandemic situation prevailing due to Covid 19, the work of Sessions Court Lucknow was badly hampered due to several deaths of the employees working in the judgeship.

The prosecution story, in brief is that the complainant have virtual acquaintance since past two years with the applicant on Facebook who is working in Mozambique Africa and she had Nikha through Facebook Call on 14.03.2019 which is recognized through the Shia Islamic Laws. When the applicant came back to India, she contacted the applicant and he denied to talk and blocked her mobile number and also from the Facebook. In January 2020, the applicant once again contacted the complainant and when the complainant requested him to take opinion of the Islamic Scholar to follow and abide the conditions of Nikah, the applicant threatened the

complainant with dire consequences and blackmail her under the threat.

Learned counsel for the applicant has submitted that the applicant has never met the complainant and the entire prosecution story is false and fake. The impugned first information report has been lodged with the purpose to blackmail the applicant and squeeze the money from him as the applicant is working abroad and having a lot of money. It has also been submitted that the applicant has wrongly been prosecuted in the case though the offences are bailable. It is further submitted that the applicant never met the complainant and no nikah or marriage took place. It is submitted that the applicant has connected with the complainant through the PUBG alleging her name 'Anaya' and thereafter she has changed her identity as 'Husna Abidi' and thereafter she has given her name as 'Iram Abbas'. The complainant has depicted her identity with different names on the social media which creates a suspicion in the mind of the applicant and thus, the applicant blocked the complainant. It is also submitted that if the entire allegation believed to be true, as stated in the first information report, does not fulfill any ingredients of the offence punishable under the I.T. Act and section 507 IPC, therefore, no case is made out against the applicant. The applicant has never committed any crime and he has no criminal history and he is a simple law abiding citizen and gone Mozambique to earn money for his livelihood. Learned counsel submits that the impugned first information report is creating hindrance in the applicant's life which contains false and fabricated facts and as such the applicant is liable to be granted anticipatory bail in the present case.

Per contra, learned AGA has opposed the submissions made by the learned counsel for the applicant and submitted that there are serious allegations against the applicant and since the applicant is working abroad, there is great chance that he will abscond and will not cooperate in the trial proceedings. It has also been submitted that during the investigation the allegations under section 67-A has not been found proved therefore, the same has been dropped. However, the allegations under sections 420, 500, 507 IPC and section 66-E are found against the applicant and the charge-sheet has been filed in the court concerned on 19.05.2019. It has further been submitted that the allegations are found proved against the applicant and therefore, looking the seriousness of the allegations/crime, which have been committed by the applicant, there is no forceful ground for granting anticipatory bail to the applicant under Section 438 Cr.P.C.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

There is no doubt that the anticipatory bail may be granted when there is material on record to show that prosecution was inherently doubtful or where there is material on record to show that there is a possibility of false implication. The concept of anticipatory bail gained momentum when the tendency to falsely implicate an individual in order to injure their reputation was recognized. Besides this, there are instances where an accused is not likely to abscond to avoid trial, does not have criminal antecedents and is not likely to tamper with evidence.

It is also well settled law that while considering the question of grant of anticipatory bail, the Court *prima-facie* has to look into the nature and gravity of the alleged offence and the role of the accused. The Court is also bound down and must look into, while exercising its power to grant bail, the antecedents of the applicant and also the possibility of the applicant fleeing from justice, apart from other factors and parameters in view of the facts of each and every case.

In the instant case, the allegations against the applicant is that he performed Nikha through Facebook Call while he was in Mozambique Africa and after coming back to India he threatened the complainant with dire consequences and blackmail her under the threat. However, in the investigation section 67-A of the I.T. Act has been dropped and sections 420, 500, 507 IPC and section 66-E are found against the applicant and the charge-sheet has been filed in the court concerned on 19.05.2019. The allegation of blackmailing is also not proved against the applicant. The applicant has no previous criminal history.

Considering the nature of accusation and without expressing any opinion on the merits of the case, the applicants are entitled to be released on anticipatory bail in this case.

Thus, in the event of arrest of the applicant Mohammad Ali involved in Crime No.448 of 2020 under section 67-A, 66-E of the Information Technology Act 2008 and Section 507 IPC, P.S. Thakurganj, District Lucknow shall be released on anticipatory bail on his furnishing personal bond with two sureties each in the like amount to

the satisfaction of the court concerned with the following conditions.

- 1.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 or tamper with the evidence;
- 2.that the applicant shall not leave India without the previous permission of the court and he shall surrender his passport before the court concerned.
- 3.that the applicant shall not tamper with the evidence during the trial;
- 4.that the applicant shall not pressurize/intimidate the prosecution witness;
- 5.that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
- 6.that in case of breach of any of the above conditions the court below shall have the liberty to cancel the bail;

In view of the aforesaid, the application for anticipatory bail is, accordingly, **allowed**.

Order Date :- 24.8.2021
VNP/-