

Court No. - 49

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 14951 of 2021

Applicant :- Abhhey Chopra

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

Counsel for Applicant :- Somya Chaturvedi

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Agarwal,J.

1. Heard Sri Gopal Swaroop Chaturvedi, learned Senior Advocate assisted by Ms. Somya Chaturvedi, learned counsel for applicant and Sri Vikas Goswami, learned AGA for the State.

2. This third Anticipatory Bail Application has been filed by the applicant-Abhhey Chopra in terms of the liberty granted by Hon'ble Supreme Court vide order dated 15.07.2021 in Petition(s) for Special Leave to Appeal (Crl.) No(s). 4785 of 2021, wherein, it is mentioned that there is non-appreciation of the facts on merit by the High Court, which the petitioner wishes to press for consideration before the High Court. Permission was granted by the Hon'ble Supreme Court and Special Leave Petition was accordingly, dismissed as withdrawn.

3. Sri Chaturvedi submits that first bail application was rejected by this Court vide order dated 17.06.2021.

4. When Sri Chaturvedi is asked to give details of the facts, which have not been considered by this Court while deciding earlier application for anticipatory bail vide its order dated 17.06.2021, then Sri Chaturvedi submits that first fact is that applicant and the complainant had met through a dating site on 28.07.2019, as is evident from the statements given by the victim. On 02.08.2019, for the first time, she had met the applicant at Noida City Center. On 02.08.2019, applicant had tried to show forceful indulgence, but on 03.02.2019, victim had fallen sick when applicant had apologized to her. On 04.08.2019, applicant had taken her to Oyo Hotel, Sector 51, Noida where applicant discussed about marriage and entered into physical relationship. Reading this fact, it is submitted that within four days of their meeting, establishment of physical relationship demonstrates that it is a case of consensual sex.

5. Second fact, which has not been considered by this Court is that chat of the case, is on record which clearly demonstrates

that there was no talk of marriage between the two and therefore, the allegation that they indulged in physical relationship in the name of marriage proposal, is not made out.

6. It is further submitted that applicant was given benefit of release on anticipatory bail till the submission of police report, if any, under Section 173(2) Cr.P.C. by a Coordinate Bench while deciding Criminal Misc. Bail Application No. 52922 of 2019 and thereafter there has been no violation of terms and conditions of anticipatory bail order, therefore, now once the investigation is complete, there is no ground for not granting anticipatory bail to the applicant.

7. Sri Vikas Goswami, in his turn, submits that in fact, this is a third bail application on behalf of the applicant. Summons have already been issued against the applicant, as is evident from Annexure-17. These summons were issued fixing date as 15.04.2021 whereas on 17.06.2021, second bail application was rejected. Applicant has yet not surrendered before the court and is not cooperating in progress of trial.

8. As far as first submission, made by Sri Chaturvedi, that it is a case of consensual sex, that is a matter of evidence. Dating sites are not an indication to have judgment on anybody's virtues. Merely, two adults meet on a dating site, and on the third day of meeting him, exchange of words are able to garner confidence that the other party is willing to marry and in the name of marriage, if physical favour is sought, then that will not amount to characterizing a victim, as a person of easy virtues having consented to physical relationship without there being any provocation like promise to perform marriage. Thus, in the aforesaid factual backdrop, presumption sought to be drawn by the learned Senior Advocate, as to the easy virtue of the victim and then deriving theory of consensual sex, may be a matter of trial, but at this stage of summoning, cannot be taken into consideration.

9. Second ground, which has been taken is in regard to the chat which was exchanged between the victim and the applicant, I have given conscious and minute look at the chat and though it is true that there is no direct reference to the marriage proposal, but exchange of words showing affection and admiration for a newly met couple without making mention of marriage in the chat does not mean that the allegation of seeking favour without there being any promise of marriage can be deduced from the mobile chat, produced by learned Senior Advocate on record.

10. In fact, chat dated 28.07.2019, inquiring about family status

of the applicant and then about birth date etc., so also inquiry about personal habits like smoking and drinking etc. are sufficient indications that there was something more than physical relationship in mind than what has been suggested by learned Senior Advocate.

11. As far as third submission is concerned that applicant was granted benefit of anticipatory bail and therefore, there is no reason for not granting anticipatory bail is concerned, Coordinate Bench had extended benefit of anticipatory bail only till filing of the chargesheet and in Para-19 of its order, has categorically mentioned that *"This Court is of the view that this is a matter of evidence as to whether there was consent given by the informant or not but tenor of the chat which has been gone through in depth by this Court would indicate that a doubt emerges in the mind as to when such a long chat used to be held between the two why nothing is being found therein indicating that any promise was made by the applicant to marry the informant before indulging in sexual activities."*

12. This Court already had an occasion in case of **Vipin Kumar @ Vikki vs. State of U.P. and Another** in Application U/S 482 No. 10125 of 2021, to discuss the law laid down in case of **Pramod Suryabhan Pawar vs. State of Maharashtra and Another, (2019) 9 SCC 608**, where in, it is held that promise to marry is to be read between the lines and there is a chat dated 30.07.2019 at 01:07:51 AM by the applicant-Abbhey Chopra, which reads as *"Fir hum tum ek kamre me band ho"*. There are similar other links which are to be appreciated by the trial court and taking into consideration a fact that none of the submissions made today were raised before this court on an earlier occasion and yet it was portrayed as if there is non-appreciation of facts on merits by the High Court, so also keeping the law on the subject of grant of anticipatory bail, as has been laid down in case of **Lavesh vs. State (NCT of Delhi);(2012) 8 SCC 730**, where in, it is held that normally court should not exercise its discretion to grant anticipatory bail in disregard to magnitude and seriousness of matter, I am of the opinion that applicant having failed to surrender after expiry of interim protection, extended in his favour, by a Coordinate Bench on 13.02.2020 till the submission of the police report and has not appeared before the court concerned despite submission of police report and there being no mention of fact, as to when applicant has received notices in regard to submission of police report, I am of the opinion that for the present, no case for grant of anticipatory bail, is made out. Applicant is free to surrender before the court below and participate in the court proceedings. He may also, if advised, apply for regular bail, which the court concerned shall consider on its own merits,

without getting prejudiced from the order passed today.

13. Accordingly, anticipatory bail application fails and is ***rejected.***

Order Date :- 14.9.2021

Vikram/-