

**Court No. - 73**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S  
438 CR.P.C. No. - 3532 of 2022

**Applicant :-** Suresh Babu

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

**Counsel for Applicant :-** Akhilesh Srivastava, Saksham Srivastava

**Counsel for Opposite Party :-** G.A., Anuj Srivastava, Ravendra  
Singh

**Hon'ble Rajesh Singh Chauhan, J.**

1. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Akhilesh Srivastava and Sri Saksham Srivastava, learned counsel for the applicant, learned AGA and Sri Siddharth Saran and Sri Akhilesh Kumar Mishra, learned counsel who have filed 'Vakalatnama' for the informant / complainant, same is taken on record.

2. Learned counsel for the applicant has filed one second supplementary affidavit enclosing therewith the true copy of the anticipatory bail application filed before the sessions court, the same is taken on record.

3. The present applicant is apprehending his arrest in Case Crime No. 02 of 2021 u/s 323, 504, 506, 313, 376, 377 IPC, P.S. Baghpat, District Baghpat (U.P.). It has been submitted that the applicant has been falsely implicated in this case as he has not committed any offence as alleged in the F.I.R.

4. The learned AGA as well as learned counsel for the informant / complainant have raised preliminary objection regarding maintainability of the present anticipatory bail application on the ground that the proclamation u/s 82/83 Cr.P.C. has been issued against the applicant, so his anticipatory bail application may not be entertained and no order in such application can be passed. Therefore, I would firstly advert to such objection regarding

maintainability.

5. As per second supplementary affidavit the Annexure S.A.-1 is anticipatory bail application of the present applicant filed before the sessions court u/s 438 Cr.P.C. on 16.3.2022 and such application has been rejected on 5.4.2022. While rejecting the anticipatory bail application the sessions court has indicated that the proclamation under section 82 Cr.P.C. has been issued against the accused. It has been informed at the Bar that such proclamation u/s 82 Cr.P.C. has been issued on 24.3.2022. Therefore, when the present applicant filed his anticipatory bail application he was not declared as proclaimed offender but he was declared proclaimed offender during the pendency of his anticipatory bail application before the learned sessions court.

6. As per section 438 Cr.P.C. the anticipatory bail application may be filed either before sessions court or before High Court inasmuch as both the aforesaid courts are having a concurrent jurisdiction. Section 438 (1) Cr.P.C. clearly mandates that if any anticipatory bail application is filed, either it may be rejected forthwith or any interim order may be passed. In other words if the court wants to know some information from the other side, the case may be posted for another date and if the applicant has got prima facie case and his apprehension of arrest appears to be bonafide in a case where the allegations prima facie do not corroborate with material available on record may grant interim anticipatory bail. However, in the present case the proclamation u/s 82 Cr.P.C. has been issued during the pendency of the application. Apex Court in re: **Lavesh vs. State (NCT of Delhi) (2012) 8 SCC 730, State of Madhya Pradesh vs. Pradeep Sharma reported in (2014) 2 SCC 171 and Prem Shanker Prasad vs. State of Bihar (Criminal Appeal No. 1209 of 2021)** has imposed bar to entertain such application if filed by the proclaimed offender. In the present case at the time of filing anticipatory bail application the applicant was not proclaimed

3.

offender.

7. Learned AGA has also informed that on 13.5.2022 the further proclamation of section 83 Cr.P.C. has been issued against the present applicant.

8. Be that as it may, at the time of filing anticipatory bail application on 16.3.2022 the present applicant was not proclaimed offender, therefore, the bar so imposed by the Apex Court would be considered in the light of intent and purport of said judgments wherein the proclaimed offender has been restrained to get any relief in the application of anticipatory bail. In the present case the applicant was not declared as a proclaimed offender on 16.3.2021, the date of filing anticipatory bail, therefore, to me such bar could not restrain the present applicant to file his anticipatory bail application before this Court under same section i.e. section 438 Cr.P.C. and, therefore, his anticipatory bail application may be heard and disposed of finally on merits.

9. Notably, sub-section 6 of section 438 Cr.P.C. provides as under :

**438(6)Cr.P.C.:** *Provisions of this section shall not be applicable.-*

*(a) to the offences arising out of .-*

*(i) the Unlawful Activities (Prevention) Act, 1967;*

*(ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;*

*(iii) the Official Secret Act, 1923;*

*(iv) the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention ) Act, 1986.*

*(b) in the offences, in which death sentence can be awarded.*

Besides, section 82 Cr.P.C. neither creates any rider nor imposes any restrictions in filing anticipatory bail application by the proclaimed offender inasmuch as the Hon'ble Apex Court has used the word '**Normally**' in re: **Lavesh (supra)**, meaning thereby normally the anticipatory bail application of the proclaimed offender should not be entertained. Therefore, only in the aforesaid case / cases the provisions of anticipatory bail application would not be applicable. It has nowhere been indicated u/s 438 Cr.P.C. that the proclaimed offender would be barred to file such application. As to whether such proclaimed offender would be granted anticipatory bail or not would depend upon the facts and circumstances of the particular issue and also on the basis of bar, so imposed by the Apex Court in re: **Lavesh (supra)**, **Pradeep Sharma (supra)** and **Prem Shankar Prasad (supra)**. Therefore, in view of the facts and circumstances of the issue in question, I do not accept the objection, so raised by the learned counsel for the opposite parties regarding maintainability of the present application for the reason that the proclamation u/s 82/83 Cr.P.C. has been issued against the applicant.

**10.** Before adverting to the merits of the case, I am of the considered opinion that the process of law should not be flouted and the person against whom the investigation is going on, he / she must cooperate with the investigation strictly in accordance with law.

**11.** In the present case the learned counsel for the applicant has submitted that the false and misconceived allegations have been levelled against the present applicant by the informant by lodging F.I.R. after a delay of one year three months and twenty three days and no explanation of such delay has been given in the F.I.R. The allegations are that on the pretext of false promise of marriage the applicant has exploited and established physical relation with the informant, however, the applicant is now denying for the marriage. Recently the Apex Court in re; **Sonu @ Subhash Kumar vs. State**

**of U.P. & another passed in Criminal Appeal No. 233 of 2021 arising out of SLP (Crl.) No. 11218 of 2019** has made distinction as to what would be a 'rape' in such circumstances and what would be the 'breach of promise'. As observed by the Apex court, if the physical relation has been established on the false promise of marriage and the physical relation was consensual in nature and it lasted for long time, prima facie it may not be treated as rape but it may be considered as breach of promise.

**12.** It is made clear here that I am not giving any finding on that aspect for the reason that the investigation is going on and it is expected that the investigating officer shall conduct and conclude the investigation strictly in accordance with law without being influenced from any finding of this order.

**13.** Learned counsel for the applicant has drawn attention of this Court towards one F.I.R. it has been enclosed as Annexure no. 13 bearing No. 0315 of 2016 u/s 420, 376, 354(B),147, 323, 504, 506, 452 IPC, P.S. Baghpat, District Baghpat, wherein the informant of the present case is also informant of that case and there are five accused persons in such case. In that case almost similar allegations relating to rape etc. have been leveled.

**14.** Learned Senior Advocate has submitted that in such F.I.R. the informant / complainant has disclosed her name as Jyoti d/o Saheb Singh whereas in the present case she has disclosed her name as Smt. Rakhi @ Jyoti d/o Jaipal Singh, however, both the persons are same. Further, she is saying herself as a divorcee of one Mr. Deepak whereas she has not shown the decree of divorce. As per statements of independent witnesses which are enclosed as Annexure no. 5, she is living in her house with her husband and she has earlier implicated some more persons also on the same allegations. Learned Senior Advocate has further submitted that the aforesaid fact creates doubt on the prosecution story. He has further

submitted that as a matter of fact this is a case of false implication of the present applicant who is a government servant, serving on the post of Junior Engineer in the Electricity Department at Baghpat. He was the tenant of the informant / complainant and having ulterior motive and extraneous design in her mind she implicated the applicant falsely. One fact has come to the notice of this Court that there was one more case against the present applicant bearing Case Crime No. 300 of 2019 u/s 409, 120B IPC, P.S. Baghpat, District Baghpat, wherein he has been granted bail by this Court on 21.1.2020 in CrI. Misc. Bail Application No. 43820 of 2019.

**15.** On account of apprehension of arrest being a government servant he could not properly cooperate with the investigation because if he is arrested and sent to judicial custody, he would suffer irreparable loss in his service. However, he has assured that if the liberty of the present applicant is protected, he shall definitely cooperate with the investigation properly and shall abide by the directions, so issued by the investigating officer relating to the investigation.

**16.** Learned AGA as well as learned counsel for the informant / complainant has vehemently opposed the prayer of anticipatory bail and have submitted that just after rejection of anticipatory bail application by the learned sessions court the applicant has filed his surrender application before the court concerned on 25.4.2022 but he did not surrender. Further, despite the proclamation u/s 82/83 Cr.P.C. having been issued the present applicant is avoiding the process of law, therefore, he is not entitled for any protection.

**17.** Having heard learned counsel for the parties and having perused the material available on record and also considering the fact that one more F.I.R. was lodged by the informant / complainant against the other persons more or less on the same allegations of rape etc. wherein her name and her father's name is different, the

7.

instant F.I.R. has been lodged after the unexplained delay of one year three months and twenty three days and the undertaking of the applicant that he shall cooperate with the investigation, I find it appropriate that the liberty of the present applicant be protected till filing of the charge-sheet, if any in view of dictum of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**". However, considering the facts and circumstances of the present case and the fact that the present applicant has not appeared before the investigating officer as yet, therefore, I hereby fix the date as 25.7.2022 directing the applicant to appear before the investigating officer on that date, failing which the benefit of this order will not be available to the applicant. He shall further abide by the directions of the investigating officer for the purposes of investigation and shall not misuse the liberty of bail. If at any time it is found that applicant is misusing the liberty of bail, any appropriate application may be filed by the opposite parties including State for seeking cancellation of this anticipatory bail.

**18.** Therefore, it is directed that in the event of arrest, applicant- **Suresh Babu**, shall be released on anticipatory bail in the aforesaid case crime number on his furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the arresting authority/ court concerned with the following conditions:-

1. that the applicant shall make himself available for interrogation by a police officer as and when required;
2. 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;
3. that the applicant shall not leave India without the previous permission of the court;

8.

4. that in default of any of the conditions mentioned above, the investigating officer shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant;

5. that the applicant shall not pressurize/ intimidate the prosecution witness;

In view of above, the present anticipatory bail application is **disposed of**.

*(Rajesh Singh Chauhan, J.)*

**Order Date :-** 16.7.2022  
Om.