

**Allahabad High Court Grants Pre-Arrest Bail To Rape Accused Till Completion Of Probe As He Marries Victim**

**2022 LiveLaw (AB) 466**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**HON'BLE RAJESH SINGH CHAUHAN, J.**

13.10.2022

**CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1687 of 2022**  
**Amarjeet versus State of U.P. Thru. Addl. Chief Secy. /Prin. Secy. Home, Lko. Lko. And 4 Others**

*Counsel for Applicant :- Sudhanshu S. Tripathi, Ritwika Tripathi*

*Counsel for Opposite Party :- G.A.*

Heard Sri Sudhanshu Shekhar Tripathi, learned counsel for the applicant, Sri S.P. Tiwari, learned Additional Government Advocate for the State-respondents and Sri Aditya Vikram Singh, learned counsel for the opposite party No.3, who has filed Vakalatnama on behalf of opposite party No.3. The same is taken on record.

This anticipatory bail application has been filed by the present applicant (Amarjeet) apprehending his arrest in Case Crime /F.I.R. No.193 of 2022, under Sections 363, 366 & 376 I.P.C. and Section 7 & 8 of Protection of Children from Sexual Offences Act, (in short "POCSO Act") Police Station Akhandnagar, District-Sultanpur.

Learned counsel for the applicant has submitted that the present applicant has been falsely implicated in this case as he has not committed any offence as alleged in the prosecution story so narrated in the First Information Report (in short F.I.R.).

The attention has been drawn towards the impugned F.I.R. which was initially lodged under Sections 363 & 366 I.P.C., however during investigation, Section 376 I.P.C. and Sections 7 & 8 of POCSO Act have been added.

Learned counsel for the applicant has submitted that the present applicant was in love affairs with the prosecutrix and both got married on 02.08.2022. The date of birth of the prosecutrix is 08.07.2004 . Therefore, on the date of marriage she was about 18 years. However, at the time of lodging F.I.R. she was about 17 years, 11 months and 07 days. He has further submitted that the present applicant and the prosecutrix are living together and the prosecutrix has got no grievance of any kind whatsoever against the present applicant. However, mother of the prosecutrix has lodged the impugned F.I.R.

Sri Aditya Vikram Singh, learned counsel for the opposite party No.3 has also submitted that the submission of learned counsel for the applicant to the effect that both are married and living together is correct. He has also submitted that the prosecutrix has got no grievance of any kind whatsoever against the present applicant. However, the F.I.R. has been lodged by mother of the prosecutrix.

Sri S.P. Tiwari, learned Additional Government Advocate has submitted that at the time of marriage, the victim was not major, therefore, the relevant Sections of POCSO Act and Section 376 I.P.C. have been added against him. He has also submitted that pursuant to the F.I.R. the investigation is going on.

On that, learned counsel for the applicant has submitted that the present applicant is aware about the fact that investigation is going on and he is willing to participate in the investigation and shall not misuse the liberty of anticipatory bail, if so granted. Therefore, his liberty may be protected till completion of investigation or till filing of the police report/ charge-sheet under Section 173 (2) Cr.P.C.

Therefore, without entering into merits of the issue, considering the arguments of learned counsel for the parties, the material available on record, the contents and allegations of the F.I.R., the undisputed fact by the parties that the applicant and the prosecutrix got married and are living happily together, investigation is going on and the undertaking of the present applicant that he shall co-operate with the investigation and shall never misuse the liberty of anticipatory bail, I find it appropriate that liberty of the present applicant may be protected till completion of the investigation or till filing of the police report/ charge-sheet under Section 173 (2) Cr.P.C. in view of the dictum of Hon'ble Apex Court rendered in re: **Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98.**

Therefore, it is directed that in the event of arrest, applicant ( Amarjeet) shall be released on anticipatory bail in the aforesaid case crime number, till completion of investigation, on his furnishing a personal bond of Rs.25,000/- 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 the 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 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 prior permission of the court;
4. that the applicant shall not pressurize/ intimidate the prosecution witnesses and shall not tamper with evidence during trial;
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;
7. that in default of any of the conditions mentioned above, the learned counsel for the State shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

It is also directed that the present applicant shall appear before the Investigating Officer on 18.10.2022 at 11:00 a.m. sharp to co-operate in the investigation and he shall further co-operate in the investigation as per direction of the Investigating Officer relating to the investigation, failing which, the benefit of this order shall not be extended to the present applicant and the Investigating Officer/ Competent Court would be at liberty to take any coercive steps against the present applicant, strictly in accordance with law.

Before parting with, it is expected that the investigation shall be completed with expedition, strictly in accordance with law.

In view of the aforesaid terms, this anticipatory bail application is **disposed of finally.**