

**Court No. - 14**

**WWW.LIVELAW.IN**

**Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S  
438 CR.P.C. No. - 9785 of 2021**

**Applicant :-** Chotu @ Suneel Kumar

**Opposite Party :-** State Of U.P. And Ors.

**Counsel for Applicant :-** Gauri Suwan Pandey, Anita

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

**Hon'ble Chandra Dhari Singh, J.**

The present application under Section 438 Cr.P.C. has been filed seeking anticipatory bail in FIR No.238 of 2021, under Sections 354, 504, 506, 376D IPC & Section 7/8 of Protection of Children from Sexual Offences Act, P.S. Misrikh, District Sitapur.

Learned counsel for the applicant has submitted that the applicant is innocent and has not committed any offence as alleged in the FIR. He has been falsely implicated due to enmity. It is submitted that initially the FIR was registered under Sections 354, 504, 506 IPC & Section 7/8 of POCSO Act, however, after recording statement of the prosecutrix under Section 164 Cr.P.C., Section 376D IPC has been added.

It is submitted that earlier the applicant's side registered an NCR bearing No.38 of 2021 dated 16.03.2021 under Sections 323 & 504 IPC at P.S. Mishrit, District Sitapur against one Ramkhelawan (father of complainant of the present case), therefore, the instant criminal proceeding has been initiated by the complainant only to harass the applicant and force him to settle the aforesaid NCR case. It is also submitted that Section 376D IPC has also been added on the pressure of the complainant.

Learned counsel has submitted that the applicant is ready for his DNA Test to ascertain his false involvement in the present case. He undertakes to abide by all the conditions imposed by this Court while granting anticipatory bail.

*Per contra*, Shri Rajesh Kumar Singh, learned Additional Government Advocate has vehemently opposed the anticipatory bail and submitted that the applicant is charged for heinous offence i.e. Sections 376D IPC and 7/8 of POCSO Act. A minor

girl was gang raped. It is further submitted that statement of the prosecutrix under Section 164 Cr.P.C. has not been annexed with the instant anticipatory bail application, however, the Court below while rejecting the anticipatory bail application of the present applicant has assigned the reason that the prosecutrix in her statement under Section 164 Cr.P.C. has specifically contended that two persons raped her when she went for natural call. Upon hearing the scream, her brother (eyewitness) came and saw the entire incident.

Learned Additional Government Advocate, on the basis of instructions, has submitted that the applicant is not participating in the investigation. His custodial interrogation is required.

I have heard learned counsel for the parties and perused the record.

Perusal of the statement of the prosecutrix recorded under Section 164 Cr.P.C., gist of which finds mention in the anticipatory bail rejection order of the Court below dated 18.08.2021, reveals the involvement of the applicant in the present case. The prosecutrix, who is a minor, in the said statement has levelled specific allegation of committing gang rape upon the applicant and other co-accused person. Crime against the women and children, more particularly, is a monstrous burial of dignity of a woman in the darkness, and it is a crime against the holy body of a woman and the soul of a society.

So far as the fact that the applicant is not co-operating in the investigation, it is settled law that if a person is not co-operating, absconding or concealing himself so as to evade the judicial process, he is not entitled for the extraordinary relief of anticipatory bail.

In view of the above, the instant anticipatory bail application is ***rejected.***

**Order Date :- 9.9.2021**

*nishant/-*