

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 8699 of 2023**

Applicant :- Smt. Gulista

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammad Faisal Khan

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed in the matter is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material available on record.
3. Apprehending her arrest, the present anticipatory bail application has been filed on behalf of the applicant - **Smt. Gulista** in Case Crime No.533 of 2016, under Sections 147, 148, 149, 452, 307, 354-B, 506 I.P.C., Police Station Mirapur, District Muzaffar Nagar, with a prayer to enlarge her on anticipatory bail.
4. The named accused persons along with the family members of their family carrying tabbal, balkati, sword etc. in their hands entered into the house of the informant and made an assault upon the father, brother and sister of the informant. They sustained grievous injuries. F.I.R. was lodged on 1.10.2016 and investigation started and now charge-sheet has been submitted in the matter.
5. It is submitted by the learned counsel for the applicant that the applicant is innocent and she has apprehension of her arrest in the above-mentioned case, whereas there is no credible evidence against her. She has been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been filed. It is further submitted that no specific role has been assigned to the applicant in the alleged occurrence and as a matter of fact, she is not even named in the F.I.R. It is further submitted that both the injured persons have sustained only simple injuries. In the statement of both the injured persons only this much has been stated that the applicant was present at the place of occurrence, but no role has been attributed to the applicant in the commission of the offence. It is also submitted that there is a cross

case also of this incident and an F.I.R. has been lodged from the accused side as well against the informant side and two persons from the accused side have also sustained injuries in the said occurrence. It is also submitted that no process u/s 82 / 83 Cr.P.C. has been issued against the applicant. Applicant is a lady having no criminal history to her credit. She has been cooperative throughout with the I.O. of the case and as such, she is entitled for anticipatory bail.

6. Per contra, learned A.G.A opposed the prayer for anticipatory bail and it has been submitted that in the F.I.R., it has already been mentioned that the family members of the male accused also took part in the commission of the crime. It is also submitted that both the injured persons have sustained serious injuries in the incident and in the C.T. Scan report of injured Mazzamil a linear non depressed fracture of right temporal bone has been found. It is further submitted that the present applicant has played active role in the occurrence, but however he could not dispute this fact that both the injured persons in their statement u/s 161 Cr.P.C. have not attributed any role of assault to the present applicant and it is also not mentioned in their statement as to what was the weapon, which was carried by the applicant.

7. In Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1, the Hon'ble Apex Court has settled the controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

8. In Aman Preet Singh v. CBI, (2022) 13 SCC 764, the Hon'ble

Apex Court has held that :

"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87CrPC that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

12. Insofar as the present case is concerned and the general principles under Section 170CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

9. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till end of the trial in the matter.

10. The anticipatory bail application is **allowed**.

11. In the event of arrest of the applicant in the aforesaid case crime, she shall be released on anticipatory bail till end of the trial on her furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned

with the following conditions :-

(i) The applicant shall make herself available before the court concerned on the date fixed in the matter;

(ii) 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 / her from disclosing such facts to the Court or to any police officer;

(iii) The applicant shall not leave India without the previous permission of the Court and if she has passport, the same shall be deposited by her before the S.S.P./S.P. Concerned.

12. In case of default of any of the conditions, same may be a ground for cancellation of protection granted to the applicant.

Order Date :- 7.12.2023

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