

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9167 of 2023**

Applicant :- Parvez Khan

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

Counsel for Applicant :- Ansar Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. This application for anticipatory bail has been filed by applicant- **Parvez Khan** in connection with Case Crime No. 151 of 2023 under sections 498A, 420, 506 IPC and 3/4 D.P. Act, P.S.- Akrabad, District- Aligarh.
3. The victim/ informant was offered tripple talak by her husband Mohd. Akhtar on persuasion of present applicant and co-accused Hafiz Jamal, who were also appeared as witness to the divorce notice. FIR was lodged on 22.3.2023. Now the charge sheet has been submitted under Section 420, 506 I.P.C.
4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Charge sheet in the matter has been submitted. It is further submitted that matrimonial dispute is going on between the informant and her husband and as a matter of fact three notices were sent by her husband to her. In the first and second notices the applicant is not the witness and in the 3rd and final notice he has been shown as a witness. It is further submitted that no offence of forgery or fraud has been committed by the present applicant and on the basis of the evidence available on record. It also appears that no fraud was committed by the present applicant, who was only a witness to the divorce notice. It is further submitted that he has been cooperative to the I.O. of the case during course of investigation. Matrimonial cases are pending between the informant and her husband. The applicant has no criminal history

to his credit. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. has opposed the prayer for anticipatory bail.

6. In the present matter the offences levelled against the applicant are punishable with the imprisonment for a maximum period upto seven years. The applicant has no criminal history to his credit. The I.O. did not require his arrest during investigation and now after submission of the charge sheet no custodial interrogation is required.

7. Although the charge sheet has been submitted in this matter but in *Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1*, the Hon'ble Apex Court has settled the law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

8. 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.

9. 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.

10. 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 conclusion of trial in the matter.

11. The anticipatory bail application is **allowed** accordingly.

12. In the event of arrest of the applicant in the aforesaid case

crime, he shall be released on anticipatory bail on his 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 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.
- ii. The applicant shall not pressurize/ intimidate the prosecution witness.
- iii. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- iv. The applicant shall not leave India without prior permission of the Court and if he has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

13. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicant in accordance with law.

Order Date :- 7.11.2023

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