

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 9106 of 2023

Applicant :- Santosh Kumar Kesharwani

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

Counsel for Applicant :- Mohammad Khalid, Deepak Singh

Counsel for Opposite Party :- G.A., Birendra Singh, Yash Pratap Singh

Hon'ble Nalin Kumar Srivastava, J.

1. Rejoinder affidavit filed on behalf of applicant in the Court today is taken on record.
2. This application has been moved on behalf of the applicant - **Santosh Kumar Kesharwani** seeking anticipatory bail in Case Crime No. 581 of 2022, under Sections 354Kha, 498A, 323, 504, 506 I.P.C. and section 3/4 Dowry Prohibition Act, P.S. Dhoomanganj, district-Prayagraj.
3. Heard learned counsel for the applicants as well as learned A.G.A. for the State and perused the record.
4. As per first information report the victim was subjected to cruelty and harassment for demand of additional dowry and her father-in-law also attempted to outrage her modesty. She was also assaulted in her matrimonial home and only after four years of marriage she was kicked out from her matrimonial home. F.I.R. was lodged on 24.8.2022 and after investigation chargesheet has been submitted.
5. It is submitted by the learned counsel for the applicant that the applicant is the father-in-law of the victim. He is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. He has been falsely implicated in this case due to some ulterior motive. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been filed and cognizance has been taken by the Court concerned. During investigation, the applicant has been fully cooperative. It is further submitted that applicant is old man and the allegation which has been made against him is totally fake and false. The

applicant is having no criminal history and in case he is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

6. Learned A.G.A. has vehemently opposed the prayer for bail and submitted that specific allegation of outraging the modesty of the victim was made against the applicant in the FIR as well as in the statements of the victim recorded under Sections 161 and 164 Cr.P.C., hence the applicant is not entitled for anticipatory bail.

7. In this matter, as is evident from the record, offences levelled against the applicants are punishable with the imprisonment upto seven years. After completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned.

8. 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.

9. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is not a fit case for

anticipatory bail to the applicants till the end of trial. The prayer made in the application is refused.

10. However, it is observed that the bail application of the applicants, if moved, shall be considered and decided by the Court concerned in terms of the law laid down by the Hon'ble Apex Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825**.

It is further directed that the learned court concerned, while considering the bail application of the applicants in the light of **Satender Kumar Antil case (supra)**, shall pass an order strictly in compliance of the directions given in the aforesaid judgment by the Hon'ble Supreme Court, in letter and spirit, particularly complying with the order dated 21.3.2023 of the Hon'ble Apex Court in the aforesaid matter.

11. The anticipatory bail application stands **disposed of** accordingly.

Order Date :- 28.10.2023

Faridul