

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9848 of 2023**

Applicant :- Smt. Suman

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

Counsel for Applicant :- Vijit Saxena

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. This application has been moved on behalf of the applicant - **Smt. Suman** seeking anticipatory bail in Case Crime No. 0363 of 2023, under Sections 147, 148, 149, 307, 395, 323, 324, 504, 506, 447, 427 IPC, Police Station- Kotwali, District- Lalitpur.
3. The prosecution story as culled out in the FIR is that 8 named and some unknown accused persons including the present applicant taking lathi, danda, sharp edged weapon, sword and desi pistol came to the plot of the informant and made an assault upon the father of the informant Dharamlal, a fire was also made by them but missed and a golden chain and Rs.10,000/- cash were also robbed by the accused persons. FIR was lodged on 13.5.2023 and investigation started, which is going on.
4. At the very outset a preliminary objection has been raised by the learned A.G.A. and that was also the query made by this Court on the earlier date that how the present anticipatory bail application is maintainable before this Court when the applicant has been declared as proclaimed offender. It appears from the perusal of the record as submitted by the learned counsel for the applicant as well that anticipatory bail application moved by the present applicant before the Sessions Court was rejected on 9.8.2023 and on 21.8.2023 the same was moved before the High Court but subsequent to the filing of the anticipatory bail application before this Court on 22.8.2023 a proclamation under Section 82 Cr.P.C. was issued by the concerned Magistrate Court. It appears from the perusal of the record that when the anticipatory bail application of the present applicant was rejected by the Sessions Court, she had

not been declared as a proclaimed offender and even on the date when the said application was moved before this Court no process under Section 82 Cr.P.C. was issued against her, which is an admitted fact available on record, hence in the light of pronouncement of the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085** an exceptional and rare case is made out in favour of the applicant so far as the maintainability of the application for grant of anticipatory bail application is concerned.

5. It has been submitted by the learned counsel for the applicant that applicant is innocent and she has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against her. Allegations levelled against the applicant are false. Investigation is going on in the matter. So far as the factual aspect of the matter is concerned it appears from perusal of the record as submitted by the learned counsel for the applicant that the injured has not named the present applicant to be present on the place of occurrence at the time of incident. It is further submitted that even the eye-witnesses of the case have not named the present applicant as participating in the commission of the alleged crime. It is further submitted that the applicant is a lady and only on account of animosity of village pradhan election she has been falsely implicated. She herself is a gram pradhan. It is further submitted that the applicant has no criminal antecedent to her credit, she is cooperating with the investigation and she is entitled for anticipatory bail. In case applicant is granted anticipatory bail, she shall not misuse the liberty of bail and would obey all conditions of bail.

6. Learned A.G.A. opposed the prayer for anticipatory bail but however could not dispute this factual aspect that the injured himself in his statement under Section 161 Cr.P.C. has not named the present applicant as participating in the commission of the alleged crime at the time of the alleged incident.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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 **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

9. 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 filing of police report under Section 173(2) Cr.P.C. before the competent Court.

10. The application is **allowed** accordingly.

11. In the event of arrest of the applicant, she shall be released on anticipatory bail on her furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make herself available for interrogation by a police officer as and when required.

(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 office.

(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, the Investigating Officer shall be at liberty to file appropriate application for cancellation of interim protection granted to the applicant.

Order Date :- 12.10.2023

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