

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9855 of 2023

Applicant :- Nargis

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

Counsel for Applicant :- Mohammad Danish

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.

2. This application has been moved on behalf of the applicant Nargis seeking anticipatory bail in Case Crime No. 17 of 2023 under Sections 498A, 304-B, 201 IPC and Section 3/4 D.P. Act, Police Station Chandausi, District- Sambhal.

3. Deceased was the adopted daughter of the informant, who was married with co-accused Ikrar and a son was born out of their wedlock but her husband, mother-in-law and father-in-law were not happy with the dowry given in the marriage and the deceased was subjected to cruelty and harassment for demand of Rs.2 lacs and one car as additional dowry. Subsequently her dowry death was caused and the dead body was cremated without any information to the family members of the deceased. FIR was lodged on 8.1.2023 and investigation started. Now the charge sheet has been submitted.

4. It has been submitted by the learned counsel for the applicant that applicant is innocent and she has apprehension of her arrest in the above-mentioned case, whereas there is no credible evidence against her. 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 the death of the deceased is a natural death and in the inquest report no injury has been found upon the body of the deceased and according to the post mortem report the cause of death was not ascertained because the body was in an advance stage of decomposition and the post mortem was conducted more than one month after the death. It is further submitted that the video CD allegedly prepared by the deceased herself is a concocted piece of evidence and on the basis of the

aforesaid video also no fault of the present applicant may be found in the unfortunate death of the deceased. It is further submitted that the viscera report was sent for chemical examination but as per FSL report no chemical or poison was found in the viscera. It is further submitted that co-accused Israr Ahmad, father-in-law of the deceased has been granted regular bail by this Court. It is further submitted that the death certificate of the deceased was issued by the Lok Nayak Hospital, New Delhi wherein the cause of death was found as respiratory failure and the patient had been suffering from chronic kidney disease, severe anemia, infection, sepsis etc. It is also submitted that the deceased was suffering with so many diseases and her treatment was going on but unfortunately she died of natural death on account of illness. It is further submitted that during course of investigation anticipatory bail was granted to the present applicant in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 2796 of 2023 vide order dated 3.5.2023. It is further submitted that the applicant is a old lady and she is entitled for anticipatory bail. It has been submitted that in case applicant is granted anticipatory bail, she will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It is submitted that the deceased was facing so many diseases only on account of harassment and torture caused by her in-laws. Her death was not natural death and she herself has prepared a video recording wherein she has made certain and specific allegations upon her in-laws including the present applicant and it has been alleged that her in-laws are planning to kill her. She is bitterly ill and no one takes care of her. Her son has also been taken by her in-laws. It is further submitted that it is a case of dowry death of a young lady. The present applicant is the mother-in-law of the deceased. Ample and sufficient evidence has been collected against her. During course of investigation charge sheet has been submitted and the applicant has played an active role in the commission of the crime, as such she is not entitled for anticipatory bail.

6. In this matter, it reveals that after completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned. 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.

7. 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.

8. 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 applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

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

Order Date :- 6.11.2023

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