

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10071 of 2023**

Applicant :- Pradeep

Opposite Party :- State of U.P.

Counsel for Applicant :- Shams Uz Zaman, Ram M. Kaushik

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Pradeep** seeking anticipatory bail in Case Crime No. 515 of 2022, under Sections 304, 420 IPC, Police Station Kandhala, District Shamli.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. It is further submitted that the applicant is not a doctor in the Kamla Devi Hospital, Delhi Road, Kandhala where allegedly the baby of the informant expired. It is also submitted that the applicant is making some negotiations with the owner of the hospital to purchase the same but as of now he is not concerned with the said hospital. It is also submitted that Kamla Devi Hospital is a registered hospital and the doctors and staff are already appointed there and the present applicant is not working as a doctor there and during investigation informant was ready and willing to make compromise with the hospital management and an affidavit to this effect was also given by him to the I.O. but the same has not been made part of the case diary by the I.O. deliberately. Applicant is the resident of State of Haryana. It is also submitted that no operation of the wife of the informant was performed by him. He is absolutely innocent. Applicant has no criminal history to his credit. The investigation of the case is going on. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail and

submitted that during investigation ample and sufficient evidence has been found to this effect that the applicant is working as doctor in the Kamla Devi Hospital. He is not a competent surgeon but despite that he proceeded to perform operation of the wife of the informant, which resulted into death of his baby. It is not a case of medical negligence but it is a case of culpable homicide not amounting to murder. It is also submitted that the owner of the Kamla Devi Hospital has also stated before the I.O. that the applicant is working as doctor in the said hospital which was given by him to the accused applicant on rent. It is also submitted that the anticipatory bail application of the applicant was rejected by the Sessions Court on 19.7.2023 but he did not immediately move to the High Court and a process under Section 82 CrPC was issued against him on 8.8.2023 and as such he is a proclaimed offender. The anticipatory bail application was filed before this Court on 30.8.2023 and on that day he had already been declared a proclaimed offender and for this reason also the application is not maintainable.

5. In this matter, from the perusal of the record it appears that for the treatment of some stomach pain, the informant brought his wife to Kamla Devi Hospital, Delhi Road, Kandhala and the doctor started treatment and in the ultrasound everything was found normal but the doctor of the hospital got her admitted in the hospital and demanded Rs. 45,000/- and also advised for operation and sent the informant for arrangement of blood and when the informant returned, he was informed by the doctors that his wife is normal but the baby is no more and demanded Rs. 20,000/- extra. F.I.R. was lodged and investigation started, which is still going on. It also reveals from the perusal of the record that the anticipatory bail application of the applicant was rejected by the Sessions Court on 19.7.2023 but he did not immediately move to the High Court and a process under Section 82 CrPC was issued against him on 8.8.2023. The anticipatory bail application was filed before this Court on 30.8.2023 and on that day he had already been declared a proclaimed offender.

6. 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.

7. The Hon'ble Apex Court in **Lavesh Vs. State (NCT of Delhi) (2012) 8 SCC 730** has held that "Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

8. Further, the judgment passed in **Lavesh** (supra) was referred by the Hon'ble Apex Court in State of **Madhya Pradesh vs. Pradeep Sharma, (2014) 2 Supreme Court Cases 171** and referring to paragraph 12 of the judgment of Lavesh (supra), in paragraph 16 of the said judgment, it was observed, relevant portion of which is as under :

"16.....It is clear from the above decision that if anyone is declared as an absconder / proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

9. From the aforesaid case laws it is evident that as per normal rule, anticipatory bail cannot be granted to an accused who is absconding or concealing himself in order to avoid execution of the process of the Court without offering any legal or plausible justification for his abscondence and has been declared a proclaimed offender.

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, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

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

Order Date :- 7.11.2023

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