

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9951 of 2023

Applicant :- Usha Devi And 2 Others

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

Counsel for Applicant :- Mahipal Singh

Counsel for Opposite Party :- G.A., Mayuri Mehrotra

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicants **Usha Devi, Prachi** and **Rachit Kumar Singh** seeking anticipatory bail in Complaint Case No. 541 of 2022, under Sections 498-A, 323, 324, 326, 506, 34 IPC and 3/4 Dowry Prohibition Act, Police Station Mahila Thana, District Bijnor.

2. Heard Shri Mahipal Singh, learned counsel for the applicants, Ms. Mayuri Mehrotra, learned counsel for the complainant as well as the learned A.G.A. for the State and perused the record.

3. It is submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against them. Applicants are mother-in-law, married sister-in-law (Nand) and Devar of the victim. Allegations levelled against the applicants are false. The applicants have been summoned by the Court concerned to face trial for the offence under Sections 498-A, 323, 324, 326, 506, 34 IPC and 3/4 Dowry Prohibition Act vide order dated 28.3.2023. No demand of additional dowry was made by the applicants nor the victim was subjected to cruelty and harassment for the said demands. Injuries sustained by the victim are simple in nature. It is further submitted that the applicant no.3 was not present at the place of occurrence at the time of incident rather he was at his work place at Bijnor. It is also submitted that he was residing separately in a rental house from the opposite party no.2 and her husband. It is further submitted that the applicants have no criminal history to their credit. It has been submitted that in case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

4. Learned counsel for the complainant and the learned A.G.A.

opposed the prayer for anticipatory bail and submitted that all the accused persons have caused the injury to the victim together. It is also submitted that the victim has sustained six injuries over her body in the form of incised wound, abrasions, red contusions and out of which injury nos.1 and 2 were caused by sharp edged weapon. It is also submitted that injury no.1 is amputation of left little finger tip. It is further submitted that it is not a case of simple matrimonial dispute. On the basis of ample and sufficient evidence, the Court concerned has summoned the applicants to face trial for the alleged offences.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. From the perusal of the record it reveals that complainant Shivani was married with co-accused Sachin. The accused persons were making demand of additional dowry and for the same the victim was subjected to cruelty and harassment and on 29.8.2020 she was sent to her parental house after assault. It also reveals from the perusal of the record that the applicants have been summoned to face trial on a private complaint for the offences under Sections 498-A, 323, 324, 326, 506, 34 IPC and 3/4 Dowry Prohibition Act. It also reveals from the perusal of the record that the applicants have actively participated in commission of the crime. The victim has sustained six injuries over her body and the injury no.1 is amputation of left little finger tip. The act has been done by accused persons in furtherance of common intention of all. It does not deem to be a simple matrimonial dispute.

7. 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.

8. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants, 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 applicants. Prayer made in the application is refused.

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

Order Date :- 17.10.2023

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