

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9888 of 2023

Applicant :- Rihana

Opposite Party :- State Of U. P. Through Principal Secretary
Home And Another

Counsel for Applicant :- Abhishek

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant **-Rihana** in Case Crime No. 1048 of 2017, under Sections 498-A IPC and 3/4 Dowry Prohibition Act, Police Station - Sardhana, District - Meerut.

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

3. It is alleged that the informant was married with Haneef on 17.10.2008 and her in-laws were not happy with the dowry given in the marriage and she was subjected to cruelty and harassment for demand of additional dowry. The husband of the victim was having illicit relations with some other woman and when the same was objected by the complainant, she was beaten by him with kicks and fists. With some other specific allegations against the husband of the victim, F.I.R. was lodged for the offence under Sections 498-A, 316, 328, 376-D, 354, 395, 457, 323, 504, 294 IPC and 3/4 Dowry Prohibition Act against thirteen accused persons and investigation started which culminated into charge sheet.

4. It is submitted by learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. The applicant is the sister-in-law of the opposite party no.2 and she lives separately from the opposite party no.2 and her husband. It is further submitted that the applicant has been falsely implicated in this case. No specific role has been assigned to the present applicant and only general allegations have been made. The applicant has nothing to do with the offences as alleged by the

prosecution. It is also submitted that the applicant has no criminal history to her credit. It is further submitted that the applicant has apprehension of her arrest by the police any time. It is further submitted that the applicant had earlier approached this Court through Criminal Misc. Writ Petition No. 3417 of 2018 which was disposed of vide order dated 13.2.2018 granting interim protection till the submission of police report under Section 173(2) CrPC to the applicant. It is also submitted that after investigation charge sheet has been submitted against the applicant only for the offence under Sections 498-A IPC and 3/4 Dowry Prohibition Act.

5. Per contra, the learned A.G.A. opposed the prayer and submitted that sufficient evidence has been collected against the accused applicant, which shows the involvement of the applicant in the present matter. It is further submitted by the learned A.G.A. that in the present case process under sections 82 Cr.P.C. has also been issued against the applicant by the court concerned, which means that she has been declared a proclaimed offender by the Court and as such she is not entitled for anticipatory bail.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

7. From the perusal of the record it reflects that the anticipatory bail application moved by the applicant before the Sessions Court concerned was rejected after hearing on 23.6.2023. Process under section 82 Cr.P.C. was issued against the applicant on 1.5.2023 which means that when the application for anticipatory bail was moved by the applicant before the Sessions Court, he was already a proclaimed offender. The present anticipatory bail application has been moved on 25.8.2023 before this Court. In this matter, investigation has been completed and the charge sheet has been submitted on 25.10.2018. It reveals that the applicant did not cooperate with the matter and this fact finds support from the record.

8. The conduct of the applicant falls within the ambit of the law promulgated by Hon'ble Apex Court in **Prem Shankar Prasad Versus State of Bihar and Another, 2021 SCC OnLine Supreme Court 955**. In the facts of the case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it reveals that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order

passed by the Magistrate. Only thereafter the accused moved an application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this-

"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

20. In the case of State of Madhya Pradesh v. Pradeep Sharma (Supra), it is observed and held by this court that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr. P.C., he is not entitled to relief of anticipatory bail."

9. 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."

10. 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."

11. Hence, 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 and has been declared as proclaimed offender. Further, in view of the recent pronouncement of the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, decided on 29.8.2023, wherein the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated, the present application is not maintainable.

12. In view of that, I deem it not a fit case to grant anticipatory bail to the present applicant. Such a person, who does not cooperate with the investigation / trial at all is not entitled to get any relief from this Court by way of anticipatory bail.

13. The anticipatory bail application is, accordingly, **rejected**.

Order Date :- 12.10.2023

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