

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10263 of 2023**

Applicant :- Kapil Singh

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

Counsel for Applicant :- Kuldeep Singh Yadav

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 **Kapil Singh** seeking anticipatory bail in Case Crime No. 234 of 2023, under Section 306 IPC, Police Station Khandauli, District-Agra.
3. It is alleged in the FIR that the deceased who was the brother-in-law (Behnoi) of the present applicant was instigated/ abated to commit suicide by his wife Priyanka and the present applicant Kapil Singh in the house of the accused person and subsequently he came to his house and committed suicide by hanging. FIR was lodged on 2.7.2023 and investigation started, which is going on.
4. It is submitted by the 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. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It is further submitted that the present applicant is in service in another district and he was not present at all on the date of occurrence at the place of incident. It is also submitted that the applicant is the brother-in-law of the deceased, was living happily with her kids and wife and there was no family dispute. It is further submitted that there was no occasion for the present applicant to instigate or abet the deceased to commit suicide. It is further submitted that the applicant is cooperating with the investigation of this case. He is having no criminal history to his credit and is entitled for anticipatory bail. It is lastly submitted that in case applicant is granted anticipatory bail, he 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 abatement/ instigation on the part of the present applicant and by the co-accused Priyanka, his sister, were made at their own house where the deceased was called. It is further submitted that the specific words of abatement spoken by the present applicant finds place in the FIR itself and mother and father of the deceased have corroborated the prosecution version in their statement under Section 161 Cr.P.C. given to the I.O. of the case. It is further submitted that as per evidence collected during investigation it was not the incident of one day only but it was a continuous conduct on the part of co-accused Priyanka and the present applicant itself, which led the deceased to a state of mind where no option was left to him except to commit suicide.

6. In ***Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1***, the Hon'ble Apex Court has settled 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. In ***Ude Singh and Others Versus State of Haryana, (2019) 17 Supreme Court Cases 301***, it has been held by the Hon'ble Apex Court that -

"16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC.....However, if the accused kept on irritating or annoying the deceased by words or deeds until the

deceased reacted or was provoked, a particular case may be that of abetment of suicide."

8. In the peculiar facts and circumstances of the case, the continuous torture and harassment caused to the deceased by her husband, the present applicant, may be taken as an abetment to the deceased to commit suicide.

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, materials collected during the course of investigation and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant.

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

Order Date: 19.10.2023

Fhd