

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10218 of 2023**

Applicant :- Atul Kumar @ Yuvraj Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Gaurav Kumar Srivastava

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. Supplementary affidavit filed today is taken on record.

2. This application has been moved on behalf of the applicant Atul Kumar @ Yuvraj Singh seeking anticipatory bail in Case No. 7627 of 2021 arising out of Case Crime No. 321 of 2021, under Sections 306, 504 IPC, Police Station - Kotwali Chibramau, District-Kannauj.

3. The daughter of the informant was continuously eve-teased by the present applicant, who was also insisting her to marry with him and being depressed and humiliated by this act of the applicant, she committed suicide by hanging. FIR was lodged on 13.6.2021 and now the charge sheet has been submitted.

4. 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. The investigation of the case has been completed and charge-sheet has been filed. It is further submitted that as per FIR the act of eve-teasing was being continuously committed by the applicant for long but no complaint was made anywhere against the applicant. It is further submitted that there is no suicide note on record. It is also submitted that essential ingredients to establish an offence under Section 306 I.P.C. are completely missing in this matter. It is also submitted that the applicant has no criminal history to his credit and he is cooperating during course of investigation. 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.

5. Learned A.G.A. opposed the prayer for anticipatory bail and at the very outset it has been argued that the applicant has already been declared as proclaimed offender by the Court concerned and on the basis of that this anticipatory bail application is not even maintainable. It is further submitted that due to the continuous harassment and eve-teasing to the applicant the daughter of the informant has committed suicide. The offence is serious and he is not entitled for anticipatory bail.

6. Before going into the merits of the case the attention of the case is drawn to the fact that Cr. Misc. Anticipatory Bail Application No. 13322 of 2021 was preferred by the applicant before this Court and he was granted anticipatory bail till submission of police report under Section 173 (2) Cr.P.C. vide order dated 4.12.2021, however, it appears from the perusal of the record that before passing of the aforesaid order the charge sheet had already been submitted before the Court concerned on 18.9.2021 and, therefore, the order dated 4.12.2021 aforesaid was having no impact. It appears from the perusal of the record that after submission of the charge sheet an Application U/S 482 Cr.P.C. No.3546 of 2022 was moved before this Court on 28.01.2022 and it has been brought to the notice of this Court that no interim protection was granted to the applicant in the aforesaid proceedings so far although the said application is still pending. It appears from the record that after submission of charge sheet the applicant did not appear before the trial Court rather he preferred to file an Application U/S 482 Cr.P.C. but since no interim protection order was granted to him this fact was even not brought to the notice of the trial Court as conceded by the learned counsel for the applicant, the trial Court committed no error in issuing the punitive process against the applicant, keeping in view his long abscondance. The material available on record as submitted by the learned A.G.A. reflects that a process under Section 82 Cr.P.C. against the present applicant has been issued on 18.1.2023 and on 19.2.2023 process under Section 83 Cr.P.C. was also issued against him. The anticipatory bail application moved by the applicant before the Sessions Court at Kannauj was rejected on 10.08.2023 and it means that when the anticipatory bail application was disposed of by the Sessions Court, the accused applicant had already been declared a proclaimed offender and the position remains the same when the present anticipatory bail application was moved before this Court on 5.9.2023.

7. 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, which reads as under (relevant portion of paragraph 17 of the said judgment):

"17. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender....."

8. 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.

9. 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.

10. 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.

11. In view of the law laid down by the Hon'ble Apex Court, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

12. The anticipatory bail application is rejected.

Order Date :- 22.11.2023

Fhd