

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10258 of 2023

Applicant :- Hanuman Singh

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

Counsel for Applicant :- Jagjeet Singh, Jai Shanker Malviya

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicant- **Hanuman Singh** in connection with Case Crime No. 37 of 2017, under section 306 IPC, P.S. Dhata, District Fatehpur.

3. It is alleged in the F.I.R. that the deceased Kallu and Durgesh, two sons of the informant were assaulted by the accused persons and they were killed by them and subsequently they were hanged in a tree. An F.I.R. was lodged under Sections 147, 302 I.P.C. and during investigation, it was converted under Sections 306 I.P.C. and charge sheet was submitted exonerating the present applicant and on the application moved by the informant under Section 319 Cr.P.C., the present applicant and co-accused, Saiyyad Husain were summoned to face trial under Section 306 I.P.C. vide order dated 01.03.2021.

4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Charge sheet in the matter has been submitted. It is further submitted that the whole prosecution story is baseless and frivolous. It is next submitted that no essential ingredient to establish an offence under Section 306 I.P.C. is made out from the material available on record. It is also submitted that there is absolutely no evidence on record as to when and how the present applicant instigated the deceased to commit suicide. It is further submitted that witnesses on the basis of whose statements the present applicant was summoned under Section 319 Cr.P.C. have also not stated anything regarding the abetment or instigation on

the part of the present applicant which led the deceased to commit suicide. It is next submitted that a Criminal Misc. Writ Petition No.6813 of 2017 was preferred by the present applicant wherein an interim protection was granted to the applicant till submission of police report under Section 173(2) Cr.P.C. and the said liberty was never misused by him. It is further submitted that to quash the order issuing non-bailable warrant against the present applicant, an Application U/s 482 Cr.P.C. No.20134 of 2023 was also preferred by the present applicant which was disposed of by this Court without granting any relief to the applicant vide order dated 17.08.2023. It is next submitted that the applicant has no criminal history to his credit and he is ready and willing to cooperate with the trial court and as such, he is entitled for anticipatory bail. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. has opposed the prayer for anticipatory bail and it has been submitted that during trial on the basis of statement of material witnesses, the trial court summoned the present applicant to face trial under Section 319 Cr.P.C. It is also submitted that witnesses of the offence have supported the prosecution version and have proved the active participation of the present applicant in the commission of the crime.

6. In the present matter, no evidence was found against the present applicant during investigation and that is why, no charge sheet was submitted against him. He has been cooperating with the I.O. of the case during the course of investigation and is having no criminal history to his credit. No custodial interrogation is required from the present applicant.

7. Although the charge sheet has been submitted in this matter, but 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 applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till conclusion of trial in the matter.

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

10. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail on his furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(ii) The applicant shall not pressurize/ intimidate the prosecution witness.

(iii) The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(iv) The applicant shall not leave India without prior permission of the Court and if they have passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

11. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicant in accordance with law.

Order Date :- 24.11.2023

Shivangi