

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10601 of 2023

Applicant :- Smt. Salma Begum

Opposite Party :- State Of U.P. .And Another

Counsel for Applicant :- Mohammad Shahrum Khan

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant **Smt. Salma Begum** seeking anticipatory bail in Case Crime No. 132 of 2023, under Section 306 IPC, Police Station Rawatpur, District Kanpur Nagar.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. In compliance of the directions given by this Court in the order dated 20.9.2023, Inspector Raj Kumar Singh, the Investigating Officer of the case alongwith the entire case diary, is present before the Court and he has explained as to why the matter was converted from Section 302 IPC to Section 306 IPC. The statement of Nayab Tehsildar, who had recorded the dying declaration of the deceased, was also recorded by the Investigating Officer under Section 161 CrPC.
4. It is alleged in the F.I.R. that the deceased Saleem, elder brother of the informant, was assaulted by the named accused persons including the present applicant and he was also set ablaze and was admitted in Ursala Hospital but he expired during treatment. F.I.R. was lodged on 15.4.2023 for the offence under Sections 147, 323, 326 and 302 IPC and investigation started, which is still going on.
5. It is submitted by the learned counsel for the applicant that applicant is innocent and she has apprehension of her arrest in the above-mentioned case, whereas there is no credible evidence against her. Allegations levelled against the applicant are false. It is further submitted that during investigation the matter has been converted into the offence under Section 306 IPC. It is also submitted that the essential ingredients for the offence under Section 306 IPC are completely missing in this matter and as a

matter of fact the father of the deceased himself resides separately from his wife i.e. to say the mother of the deceased. Applicant is the sister of the deceased and she had absolutely no reason / motive to abet the deceased to commit suicide. There was no abetment or instigation on the part of the applicant to the deceased to commit suicide and even there is no evidence on record at all as to how the present applicant abetted / instigated the deceased to commit suicide. It is also submitted that the dying declaration of the deceased said to be recorded by the Nayab Tehsildar is a concocted piece of evidence and has not been found reliable during investigation. It is also submitted that at the time of occurrence the present applicant was not present at the place of occurrence. The investigation of the case is going on. It has been submitted that in case applicant is granted anticipatory bail, she shall not misuse the liberty of bail and would obey all conditions of bail.

6. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that though the matter has been converted into an offence under Section 306 IPC yet during investigation sufficient and ample evidence has been collected against the applicant to the effect that the deceased was abetted by the applicant and other co-accused persons to commit suicide. It is also submitted that the deceased had absolutely no reason to commit suicide unless he was abetted/ instigated by the accused persons. It is a matter of family property dispute. F.I.R. in the matter has been lodged by the real brother of the deceased and the mother of the deceased, who also happens to be the mother of the present applicant, in her statement recorded under Section 161 CrPC has stated specific against the applicant. During investigation evidence has been collected to the effect that the present applicant alongwith her husband wanted the house of the father of the applicant to be vacated by the deceased but the deceased was not ready to do so and due to that he was bitterly harassed and tortured by the present applicant and her husband co-accused Firoz and that is why he committed suicide by burning on 14.4.2023. The father of the deceased, who happens to be the father of the present applicant also, had himself given such statement to the I.O. under Section 161 CrPC.

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

8. From the perusal of the record it reveals that the matter has been converted from Section 302 IPC to Section 306 IPC. During investigation evidence has been collected to the effect that the

present applicant alongwith her husband wanted the house of the father of the applicant to be vacated by the deceased but the deceased was not ready to do so and for that reason he was bitterly harassed and tortured by the present applicant and her husband co-accused Firoz.

9. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has 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.

10. 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."

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

12. Hence, considering the settled principles of law regarding

anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that his continuous course of conduct which created a situation leading the deceased perceiving no other option except to commit suicide and also the fact that the 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 applicant. Prayer made in the application is refused.

13. The application is **rejected**.

Order Date :- 16.10.2023

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