

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11119 of 2023

Applicant :- Md.Sharif Hashmi @ Sharif Hashmi

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

Counsel for Applicant :- Sunil Kumar Tiwari

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. Supplementary affidavit filed today is taken on record.

2. This application for anticipatory bail has been filed by applicant- **Md.Sharif Hashmi @ Sharif Hashmi** in connection with Case Crime No. 0291 of 2020 under sections 498-A, 323, 504, 506, 336, 427, 325, 377 IPC and Section 3/4 D.P. Act, P.S.- Chaubepur, District- Varanasi.

3. On account of some matrimonial dispute between the husband/ applicant and against in-laws, the present applicant along with his other family members made an assault upon the informant and her family members and they sustained grievous injuries. Prior to that the informant/ wife was subjected to cruelty and harassment by her in-laws for demand of additional dowry. FIR was lodged on 12.6.2020 and after investigation 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 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 as a matter of fact the in-laws of the present applicant themselves made an attack upon the applicant and his family members and they sustained grievous injuries. FIR as case crime no. 291 of 2020 (state versus Mohd. Sharif Hashmi and others) under Sections 498-A, 323, 504, 506, 336, 427, 313, 377 I.P.C. & Section 3/4 D.P. Act, P.S.- Chaubepur, District- Varanasi was also lodged against the informant side wherein charge sheet has been submitted. It is further submitted that all the accused persons have sustained only simple injuries in this matter. It is also

submitted that the offence under Section 313 I.P.C. has been deleted during course of investigation and there is no medical evidence in respect of the offence under Section 377 I.P.C. It is further submitted that after lodging of the FIR a Cr. Misc. Writ Petition No. 7181 of 2020 was preferred by the applicant wherein a protection till submission of the police report under Section 173 (2) Cr.P.C. was granted to him by this Court vide order dated 31.7.2020 and the said liberty has not been misused. It is also submitted that during course of investigation the applicant has been cooperative and he is entitled for anticipatory bail. 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. has opposed the prayer for anticipatory bail but however, he could not dispute the fact that an FIR has been lodged from the accused side as well, hence, persons from accused side has also sustained injuries in the matter. It has been submitted that an assault as such has been made by the applicant and his family members and the wife of the applicant has sustained many injuries and a fracture has also been found in her thumb. It is also submitted that no mediation took place between the parties during investigation. It is also submitted that the present applicant is the husband of the informant and he has been played a main role in the commission of the crime and he is not entitled for anticipatory bail.

6. In the present matter charge sheet has been submitted. No custodial interrogation is required in the matter and after submission of the charge sheet no process under Section 82/83 Cr.P.C. has been issued against the applicant till date and he has cooperated during the investigation. Criminal history of one solitary case against the applicant has been explained.

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 law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

8. 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.

9. 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.

10. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87 Cr.P.C that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

12. Insofar as the present case is concerned and the general principles under Section 170Cr.P.C, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

11. 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.

12. The anticipatory bail application is **allowed** accordingly.

13. 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 he has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

14. 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 :- 28.11.2023

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