

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10830 of 2023

Applicant :- Priya Pandey And 3 Others

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

Counsel for Applicant :- Prabha Shanker Mishra, Ayush Mishra

Counsel for Opposite Party :- G.A., Arvind Kumar
Kushwaha, Shweta Kesarwani

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Prabha Shanker Mishra, learned counsel for the applicants and Sri Arvind Kumar Kushwaha, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and also perused the material available on record.
3. The present anticipatory bail application has been filed on behalf of the applicants in Complaint Case No.7673 of 2015, Manoj Kumar Vs. Priya Pandey and others, under Sections 406, 379, 342, 506 of IPC, Police Station Kotwali Shahar, District Mirzapur, with a prayer to enlarge them on anticipatory bail.
4. As per prosecution story, the applicants along with one unknown person are stated to have barged into the house of the complainant on 04.05.2015 at about 08:00 PM and had put the family members of the complainant in a room and closed it from outside and thereby taken away all the valuable from the house. The applicant no.1 Priya Pandey is the wife of the complainant.
5. Learned counsel for the applicants has stated that they are maliciously being prosecuted in the present case due to ulterior motive. They have nothing to do with the said offence as alleged by the prosecution. Learned counsel has further stated that the applicant no.1 and the complainant are the husband and wife and they have fallen apart. Several cases were instituted by the applicant no.1 against the complainant and his family members and the matter was settled between the parties, as such, after withdrawal of the said cases, the applicant no.1 was thrown out of her maternal home and the present complaint case was instituted. Learned counsel has also stated that the applicants had challenged

the said summoning order dated 04.01.2016 by filing a petition u/s 482 Cr.P.C. No.13829 of 2020 wherein interim protection was granted to the applicants vide order dated 23.09.2020 but in the light of the judgement of Apex Court passed in Asian Resurfacing of Road Agency Pvt. and Another vs. Central Bureau of Investigation reported in 2018 (16) SCC 299, the said interim protection stood vacated, as such, non-bailable warrant was issued against them and they have every apprehension of their arrest.

6. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegations made against them. The circumstances which, as per counsel, led to the false implication of the applicants have also been touched upon at length. It is further submitted that the applicants are not the previous convict. In case, the anticipatory bail application of the applicants is allowed, they will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned counsel for the informant as well as learned A.G.A. have vehemently opposed the prayer for grant of anticipatory bail on the ground that in the said petition filed u/s 482 Cr.P.C., the applicants are not cooperating and they have not filed any rejoinder affidavit in it, as such, interim protection has not been extended. Learned counsel has further stated that after the institution of the present complaint case, five more cases have been instituted against the complainant and his family members by the applicant no.1.

8. Considering the arguments advanced by the learned counsel for the parties, in view of the law laid down by the Apex Court in the case of "***Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98***" and the fact that parties are at animous against each other and also the fact that they belong to the side of bride, I find it a fit case to grant anticipatory bail to the applicants.

9. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicants is **allowed**.

10. In the event of arrest of the applicants, **Priya Pandey, Kuldeep Dubey, Ashish Dubey and Dharendra Dubey**, involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

- i. that the applicants shall make themselves available for interrogation by a police officer as and when required;
- ii. that the applicants 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;
- iii. that the applicants shall not leave India without previous permission of the court;
- iv. that the applicants shall not tamper with the evidence during the trial;
- v. that the applicants shall not pressurize/ intimidate the prosecution witness;
- vi. that the applicants shall appear before the trial court on each date fixed unless personal presence are exempted;

11. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicants.

12. It is made clear that observations made in granting anticipatory bail to the applicants shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 3.11.2023
Siddhant