

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10996 of 2023

Applicant :- Smt. Akhilesh

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

Counsel for Applicant :- Hari Manish Bahadur Sinha

Counsel for Opposite Party :- G.A., Sanjeev Kumar Mishra

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Smt. Akhilesh** seeking anticipatory bail in Case Crime No. 124 of 2022, under Sections 498-A, 304-B IPC and 3/4 Dowry Prohibition Act, Police Station Kalyanpur, District Kanpur Nagar.
2. Heard learned counsel for the applicant, learned counsel for the informant as well as the learned A.G.A. for the State and perused the record.
3. It has been submitted by the learned counsel for the applicant that applicant, who is mother-in-law of the deceased, 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 general role has been assigned to all the accused persons in this case and there is nothing specific against the present applicant. It is also submitted that in the post mortem report cause of death of the deceased has been found asphyxia as a result of ante mortem hanging but, however, except ligature mark in the neck of the deceased, no other injury has been found. The investigation of the case is going on and the applicant is cooperating with the same. It is also submitted that as a matter of fact the father of the deceased had himself committed suicide about one and half year back on account of which the deceased was in a state of depression and sorrow and probably for that reason she committed suicide. It is further submitted that the applicant was not present at the time of occurrence and she herself was admitted in the hospital on the said date. It is also submitted that the deceased never complained of any incident of cruelty, harassment or assault made to her by any of her in-laws. It has been submitted that in case applicant is granted anticipatory bail, she will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. and learned counsel for the informant opposed the prayer for anticipatory bail and submitted that at the stage of consideration for anticipatory bail, the plea of alibi taken by the applicant cannot be taken into consideration and moreover the alleged medical papers submitted by the applicant are not the part of the case diary. The co-accused persons Adarsh Kumar, husband of the deceased and Arun Kumar Singh, father-in-law of the deceased, have been granted regular bail by this Court. It is also submitted that the death of the deceased has been occurred within seven years of her marriage otherwise than in normal circumstances within the precinct of the house of the present applicant. It is further submitted that the deceased was continuously being harassed for demand of Rupees Twenty Lakhs as additional dowry and the family members of the deceased were not capable to pay the same. Sufficient evidence has been collected against the applicant during investigation so far.

5. In this matter, from the perusal of the record it reveals that the deceased was subjected to cruelty and harassment by her in-laws for the demand of additional dowry. She was assaulted and subsequently her dowry death was caused. F.I.R. was lodged on 1.3.2022 and after investigation though charge sheet has been submitted against co-accused persons yet investigation against the present applicant is going on. It also reveals from the perusal of the record that the co-accused persons Adarsh Kumar, husband of the deceased and Arun Kumar Singh, father-in-law of the deceased, have been granted regular bail by this Court. The death of the deceased has been occurred within seven years of her marriage otherwise than in normal circumstances within the precinct of the house of the present applicant. At this stage plea of alibi taken by the applicant cannot be taken into consideration. Ample and sufficient evidence has been collected so far against the applicant during course of investigation.

6. 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.

7. 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 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.

8. The application is **rejected**.

Order Date :- 17.10.2023

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