

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11058 of 2023

Applicant :- Sakil

Opposite Party :- State of U.P.

Counsel for Applicant :- Akhilesh Kumar Tiwari, Rahul
Mishra

Counsel for Opposite Party :- G.A., Anil Kumar
Tripathi, Shashi Shankar Tripathi

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
3. Heard Sri Akhilesh Kumar Tiwari, learned counsel for the applicant, Sri Utsav, Advocate holding brief of Sri Shashi Shankar Tripathi, learned counsel for the informant and Sri Sunil Kumar, learned A.G.A. for the State as well as perused the material placed on record.
4. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.117 of 2023, under Sections 342, 343, 365, 395, 419, 420, 467, 468, 471, 506 and 34 I.P.C., Police Station Machhli Shahar, District Jaunpur, during the pendency of trial.
5. As per prosecution story, the applicant in collusion with the husband of the victim, who happens to be father of the informant, are stated to have forcibly abducted the mother of the informant and got a general Power of Attorney executed in favour of Sabbir @ Pappu forcibly on 25.3.2023.
6. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. The applicant is not the beneficiary of the said Power of Attorney rather it is the husband who was the beneficiary of said Power of Attorney. Learned counsel has placed reliance on Annexure-5, whereby she has allayed allegations against her husband and son by moving an application before the S.P. Jaunpur on 26.4.2023. The criminal history of one case assigned to the applicant stands explained as he is on bail in the said Case Crime No.32 of 2020, Police Station Chanda, District-

Sultanpur.

7. Learned counsel for the applicant has further stated that the applicant is a petty businessman at Gujarat, as such, he lives far away and has nothing to do with the said offence. The applicant has apprehension of his arrest. Learned counsel for the applicant has also stated that the applicant has co-operated in the investigation and undertakes that he will cooperate in the investigation in future also failing which the State can move appropriate application for cancellation of the anticipatory bail.

8. Per contra, learned counsel for the informant and learned AGA have vehemently opposed the anticipatory bail application on the ground already the proceedings under Section 82 Cr.P.C. have been initiated against the applicant on 21.7.2023. It is further stated that already the elder brother of the informant has instituted a missing report regarding their mother on 10.4.2023. They have further stated that the present anticipatory bail application is not maintainable in the light of the settled law of the Apex Court passed in case of ***Lavesh vs. State (NCT of Delhi)*, (2012) 8 SCC 730**.

9. In rebuttal, learned counsel for the applicant has stated that the applicant has yet not been declared as proclaimed offender. Learned counsel has placed reliance on the judgment of this Court passed in ***Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No.4560 of 2023 (Udit Arya vs. State of U.P.)***. Learned counsel has also placed much reliance on the paragraph-14 of the judgment of the Apex Court in ***State of Haryana vs. Dharamraj***, decided on 29.8.2023 in ***Criminal Appeal No.2635 of 2023 (Arising out of SLP (Crl.) No.2256 of 2022)***, which reads as under:-

"14. As would be manifest from the Impugned Order, the reasoning thereof is contained in Paragraphs 7-12. Closer perusal reveals what weighed with the High Court:

- (a) That the maximum sentence for the offences in the First Information Report did not exceed 7 years.
- (b) That the possibility of the respondent influencing the investigation, tampering with evidence et al, could be taken care of by imposing stringent conditions.
- (c) That the respondent's declaration as a proclaimed offender was not on account of him deliberately avoiding court.
- (d) That the respondent was a first-time offender and deserved a chance to 'reform and course correct'."

10. After taking into consideration the rival contentions and the fact that proceedings under Section 82 Cr.P.C. have already been passed against the applicant on 21.7.2023 and the said arguments tendered at Bar in the light of the judgment in

Lavesh (supra), I do not find it a fit case for grant of anticipatory bail to the applicant.

11. The present anticipatory bail application is hereby found devoid of merits and is accordingly **rejected**.

12. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 30.10.2023

Vikas

[Krishan Pahal, J.]