

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11494 of 2023

Applicant :- Mona Srivastava @ Sakshi @ Sakshi Devi

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

Counsel for Applicant :- Mohd. Afzal

Counsel for Opposite Party :- G.A., Swatantra Kumar

Hon'ble Nalin Kumar Srivastava, J.

1. Ind supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for the informant and perused the record.
3. Apprehending her arrest in Case Crime No.521 of 2023, under Section 306 IPC, Police Station Kotwali, District Fatehpur, the applicant - **Mona Srivastava @ Sakshi @ Sakshi Devi** has filed this anticipatory bail application seeking anticipatory bail in the aforesaid crime number.
4. The marriage of the deceased was settled with the applicant, but for certain reasons the marriage could not take place, however the relations between the two did not come to an end. The accused applicant started living again in the locality of the deceased and they were in friendly relations. Subsequently, on the fateful day, a quarrel took place between the two and the deceased committed suicide and his body was found lying in a park. F.I.R. was lodged on 18.8.2023 and investigation started, which is still going on.
5. Learned counsel for the applicant submits that that applicant is innocent and she has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against her. She has been falsely implicated in this matter. Allegations levelled against the applicant are false. Investigation is going on into the matter. It is further submitted that the deceased and the applicant had some affairs which each other and their marriage was settled, but for certain reasons it could not take place. It is further submitted that the applicant and the deceased continued to meet each other even after the cancellation of their marriage. It is further submitted that no altercation took place between the two on the fateful day. It can never be said that the deceased was ever instigated, abetted or provoked by the applicant to commit suicide. It is further submitted that essential ingredients to establish the offence under section 306 IPC are complete missing in this matter. Cause of death of the deceased was not ascertained in the postmortem and that is

why the viscera was preserved and FSL Report is still awaited. It is also submitted that only an abrasion has been found on the body of the deceased. There is no suicide note on record written by the deceased. Applicant is a young lady, who is cooperating with the investigation and as such she is entitled for anticipatory bail.

6. Per contra, learned A.G.A. as well as learned counsel for the informant opposed the prayer for anticipatory bail and it has been argued that the accused applicant was pressurizing the deceased to leave his parents if he wanted to marry with her and he was in a state of deep depression. It is further submitted that the accused applicant also made an assault upon the deceased on the fateful day. It is further submitted that the applicant by her conduct instigated and abetted the deceased to bring him in such a state of mind where no option was left with him except to commit suicide. Offence committed by the applicant is very serious and as such he is not entitled for anticipatory bail.

7. In the present matter, there is no suicide note of the deceased on record. Prima facie no such statement or conduct on the part of the applicant comes into light on the basis of investigation so far which brings the matter within the purview of offence under section 306 IPC. Investigation into the matter is going on.

8. 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.

9. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

10. 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 the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

11. The anticipatory bail application is **allowed**.

12. In the event of arrest of the applicant in the aforesaid case crime, she shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court on her furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make herself available for interrogation by a police officer as and when required.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if she has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

13. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 28.10.2023

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