

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11015 of 2023

Applicant :- Nawab Khan

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

Counsel for Applicant :- Mahesh Kumar, Firdos Ahmad

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.

2. This application for anticipatory bail has been filed by applicant- **Nawab Khan** in connection with Case Crime No.30 of 2023, under Sections 3/5 (1) of U.P. Prohibition of Unlawful Conversion of Religion Act, Police Station Pashchim Sharira, District Kaushambi.

3. One hindu lady was eloped by main accused Arif, who tried to convert her into his religion and also kept her with him and during her stay with main accused Arif, the present applicant along with some other co-accused persons also pressurized her for conversion. Ultimately death of the victim occurred and after filing of the FIR now the charge sheet has been submitted.

3. 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 the present applicant has not been assigned any role in the commission of the alleged crime. The independent witnesses have stated before the I.O. of the case that the victim was taken by main accused Arif and it was he, who tried to convert the religion of the victim and also kept her with him. The present applicant has no relation with the main accused and he has been cooperative during course of investigation. It is further submitted that co-accused Kudrat and Banne Khan has already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 9157 of 2023 by order dated 16.8.2023. In case applicant is granted anticipatory bail, he shall

not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. has opposed the prayer for anticipatory bail.

5. In the present case after filing of the charge sheet no custodial interrogation is required. The offences levelled against the applicant is punishable with the imprisonment for a maximum period upto seven years.

6. 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.

7. 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.

8. 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.

9. 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.

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

11. 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.

12. 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 :- 16.10.2023

Fhd