

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 11016 of 2023

Applicant :- Mohammad Faheem

Opposite Party :- State of U.P.

Counsel for Applicant :- Tawwab Ahmed Khan

Counsel for Opposite Party :- G.A.,Mushir Khan

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Tawwab Ahmed Khan, learned counsel for the applicant, Sri Mushir Khan, learned counsel for the informant as well as Sri Anit Kumar Shukla, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.156 of 2023, under Sections 498-A, 326-A, 323, 324, 504, 506, 120-B I.P.C., Police Station Bhojpur, District Moradabad, during the pendency of trial.
4. As per prosecution story, the marriage of the applicant was solemnized with the informant as per Muslim rites on 23.5.2017. The applicant and other family members are stated to have subjected her to cruelty for demand of dowry and are stated to have assaulted her on 21.5.2023 at about 08:00 p.m., thereby the applicant, who happens to be husband of the victim, is stated to have sprinkled acid over her, thereby causing grievous injuries to her.
5. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. The medical examination, which is indicated as Annexure No.2, has been taken up on 24.5.2023 at about 10:15 p.m., i.e., after a delay of three days and the said report mentions the injuries to be four days old, as such, they do not corroborate with the time of offence. Learned counsel has further stated that there are statement of the villagers taken up by the Investigating Officer which indicates that the applicant lives far away at Nainital and is working as labourer there alongwith family. The strong *alibi* of the applicant further falsifies the prosecution story.
6. Learned counsel for the applicant has further stated that co-accused person Smt. Bhoori, who happens to be sister-in-law (*Jethani*) of the informant has been granted anticipatory bail by this Court vide order dated 24.8.2023 passed in Criminal Misc.

Anticipatory Bail Application U/S 438 Cr.P.C. No.9590 of 2023. The applicant has no criminal history to his credit. The applicant has apprehension of his arrest. Learned counsel has stated that the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

7. Per contra, learned counsel for the informant and learned A.G.A. have vehemently opposed the anticipatory bail application on the ground that the arguments tendered at Bar pertains to regular bail. Learned counsel has stated that the injury report corroborates the prosecution story. There is no possibility of falsely inflicting burn injury that too by acid. In the present scenario of the society, no women would get herself burnt by acid and falsely implicate the accused person.

8. Learned counsel for the informant has further stated that as far as the duration of injuries is concerned, there are always margin of errors in the said duration and it also indicates to be more than three days as far as the examination is concerned as it was taken up on 24.5.2023 at about 10:15 p.m. Learned counsel has stated that the case of the applicant is at different footing to the co-accused person, Smt. Bhoori who has been granted anticipatory bail, although he has not disputed the fact that applicant has no criminal antecedents to his credit.

9. After hearing learned counsels for the parties and taking into consideration that there are superficial burn injuries sustained by the victim which are four in numbers and the fact that the time being also matched with the prosecution story and the applicant, who is the husband of the victim, being the main accused of having thrown the acid on her as also that the arguments tendered at Bar pertains to regular bail and it cannot be agitated under the provisions of Section 438 Cr.P.C., I do not find it a fit case for grant of anticipatory bail to the applicant.

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

11. 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 :- 27.10.2023/ Vikas

[Krishan Pahal, J.]