

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11271 of 2023

Applicant :- Smt Varisha

Opposite Party :- State of U.P.

Counsel for Applicant :- Manish Mishra, Anil Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Heard learned counsel for the applicant as well as the learned AGA and perused the material available on record.

2. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant in Case Crime No. 146 of 2005, under Sections 376, 342, 506 IPC, P.S. Nai Mandi, District Muzaffar Nagar ,during the pendency of trial.

3. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. It is submitted that informant has filed a false report on 12.3.2005 regarding the incident that allegedly took place on 29.08.2004 against her husband. It is further submitted that earlier a report was filed by husband of informant that his wife was taken by the accused persons on 29.08.2004 and that report was filed on 4.10.2004. It is further submitted that after investigation charge sheet into the matter was submitted, which has been challenged by the applicant and another by filed 482 petition being Criminal Misc Application No. 12295 of 2005 in which this court vide order dated 7.9.2005 stayed the further proceedings of the criminal case. It is further submitted that the said 482 Cr.P.C. petition has been dismissed on 17.7.2023 and the stay order was vacated. It is further submitted that in the meantime, the informant and her husband has also died and the trial is going on. It is further submitted that bailable warrant has been issued against the applicant vide order dated 26.7.2023 and no NBW has been issued as yet. The applicant has apprehension of his arrest by the police any time.

4. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, she is directed to be enlarged on anticipatory bail as per

the Constitution Bench judgment of the Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98***. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

5. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant Smt Varisha involved in the aforesaid crime be released on anticipatory bail on her furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(1) 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 them from disclosing such facts to the Court or to any police officer; and

(2) The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(3) The applicant shall surrender her passport, if any, to the concerned Court forthwith. The passport will remain in custody of the concerned Court.

(4) The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

(5) In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98***.

(6) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of their bail and proceed against them in accordance with law.

6. In default or misuse of any of the conditions, the Public

Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicants.

7. With the aforesaid observations/ directions, the application stands **disposed of**. Trial court is further directed to make every endeavor to conclude the trial of Case No. 1385 of 2006 (State Vs Islamu and others), arising out of Case crime No. 146 of 2005, under Sections 376, 342, 506 IPC, P.S. Nai Mandi, District Muzaffar Nagar, pending before ACJM-I, Muzaffar Nagar within a period of six months without granting unnecessary adjournments to either side in accordance with law.

Order Date :- 31.10.2023

RavindraKSingh