

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11285 of 2023

Applicant :- Ishaq Khan And Another

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

Counsel for Applicant :- Vijay Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Counter affidavit filed on behalf of the State is taken on record.
2. This application has been moved on behalf of the applicants - **Ishaq Khan** and **Smt. Sajida** seeking anticipatory bail in Case Crime No. 9 of 2023, under Sections 506, 120-B IPC and 3/5(1) Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station Phase-II, District Gautam Budh Nagar.
3. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.
4. It is submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. It is further submitted that in the entire F.I.R. there is no allegation against the present applicants. Applicants are the grand parents of main accused Shoeb and offence, if any, has been committed by the main accused Shoeb and the victim herself in her statements recorded under Sections 161 and 164 CrPC has not alleged any role to the present applicants. It is further submitted that there was even no criminal conspiracy on the part of the present applicants for commission of the alleged crime. After completion of investigation, charge sheet has been submitted in the matter and the applicants have been cooperative during course of investigation. It is also submitted that during investigation the applicants had been granted anticipatory bail by this Court on 16.5.2023 vide Criminal Misc. Anticipatory Bail Application No. 4661 of 2023 till submission of the police report under Section 173(2) CrPC. Applicants have no criminal history to their credit. No process under Sections 82 and 83 CrPC has been issued against the applicants and the applicants have not been declared

absconder. In case applicants are granted anticipatory bail, they will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that on the false pretext of marriage the main accused Shoeb after administering some intoxicant and playing fraud with the victim committed rape upon her in his house and all the accused persons made attempt to convert her religion. It is also submitted that ample evidence has been collected against the applicants to be involved in criminal conspiracy.

6. I have considered the rival submissions made by the learned counsel for the parties.

7. In this matter, from the perusal of the record it reveals that the main accused Shoeb committed rape with the victim after administering some intoxicant in the cold drink in his own house. The main accused has also made a promise to marry with the victim and even he also tried to persuade the victim to convert her religion. It is also mentioned in the F.I.R. that all the family members of the main accused Shoeb including his parents and grand parents were also engaged in the entire criminal conspiracy and when the matter was brought into the knowledge of the family members of the victim, F.I.R. was lodged against named accused persons including the present applicants and now charge sheet has been submitted. It also reveals that main offence has been alleged against the main accused Shoeb, who is the grand son of the present applicants. No specific role has been assigned to the present applicants in commission of the crime. They have been cooperative during investigation.

8. 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.

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.

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. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicants till the end of trial.

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

11. In the event of arrest of the applicants, they shall be released on anticipatory bail on their 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 applicants shall make themselves available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) The applicants 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 applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

12. In case of default of any of the conditions, the same may be a ground for cancellation of protection granted to the applicants.

Order Date :- 7.11.2023

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