

**Court No. - 73**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 51449 of 2019

**Applicant :-** Smt. Jagiya @ Vimla Devi

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

**Counsel for Applicant :-** Pavan Kumar, Avdhesh Kumar Tiwari, Dipti Tiwari, Narendra Singh, Vivek Kumar Tiwari

**Counsel for Opposite Party :-** G.A.

**Hon'ble Nalin Kumar Srivastava, J.**

1. This application has been moved on behalf of the applicant - **Smt. Jagiya @ Vimla Devi** seeking anticipatory bail in Case Crime No. 252 of 2019, under Section 304 IPC, Police Station Puramufti, District Kaushambi.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by the learned counsel for the applicant that applicant is innocent and she has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against her. Allegations levelled against the applicant are false. It is also submitted there there is no independent eye witness of the occurrence. After completion of investigation, charge sheet has been submitted in the matter and during investigation the applicant has been cooperative with the Investigating Officer. It is also submitted that the applicant has been granted interim protection by this Court vide order dated 25.11.2019. No processes under Sections 82 and 83 CrPC have been issued against the applicant and the applicant has not been declared proclaimed absconder. It is further submitted that there is no informant in this case and inadvertently in the last order the informant was directed to file counter affidavit. It is also submitted that trial of the co-accused persons is going on and PW-1 and PW-2 have been declared hostile in the trial and they have not supported the prosecution case. No custodial interrogation is required. In case applicant is granted anticipatory bail, she will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that the post mortem report of the deceased fully corroborates the prosecution version. Specific role of the present

applicant has come into light, as per the allegations of the F.I.R. Ample evidence has been collected against the applicant during course of investigation. It is a case of culpable homicide not amounting to murder of the deceased and the applicant is not entitled to anticipatory bail. However, learned AGA could not dispute this factual aspect that PW-1, informant and PW-2, daughter of the informant, have been declared hostile in the trial and they have not supported the prosecution case.

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

6. From the perusal of the record it reveals that on her exhortation and after providing lathi to her son, co-accused - Chandan, he made assault upon the head of the deceased who was the wife of the present informant. F.I.R. was lodged on 4.8.2019 and investigation started, which culminated into charge sheet. It also reveals that co-accused PW-1, informant and PW-2, daughter of the informant, have been declared hostile in the trial and they have not supported the prosecution case.

7. 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.

8. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant 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 applicant till the end of trial.

9. The application is **allowed** accordingly.

10. In the event of arrest of the applicant, she will 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 Court concerned with the following conditions:-

(i) The applicant shall make herself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(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.

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

**Order Date :- 6.11.2023**

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