

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11302 of 2023

Applicant :- Km. Pinki

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

Counsel for Applicant :- Deepak Kumar Pal

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.
2. Apprehending her arrest in Case Crime No.612 of 2023, under Sections 304, 419, 420 IPC and Section 15 (2) Indian Medical Council Act, Police Station Chandpur, District Bijnor, the present anticipatory bail application has been moved by the applicant - **Km. Pinki** seeking anticipatory bail.
3. A caesarean delivery of Smt. Omwati, the wife of the informant, was performed by the present applicant along with co-accused Dr. Sanjay Kumar and Dr. Harish Kumar in Anmol Health Care Centre, Chandpur, Bijnor, who died after giving birth to a girl child on 25.8.2023. F.I.R. was lodged and investigation started, which is going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. She has been falsely implicated in this matter. Allegations levelled against the applicant are false. Applicant's case is squarely covered under Section 438 Cr.P.C. It is further submitted that the applicant is only a nurse in the Anmol Health Care Centre. She did not perform any caesarean operation of the deceased and the surgery, if any, was performed by Doctors of the aforesaid Health Care Centre. It is further submitted that the applicant has absolutely no role in the commission of the alleged crime. She is having a certificate of registration issued by the Medical - Tech Education & Research Council of India for having a diploma in Community Medical Services & Essential Drugs. She was a competent nurse and never engaged in any kind of surgery. She has been cooperative during investigation so far and as such she is entitled for anticipatory bail.
5. On the other hand, learned A.G.A. vehemently opposed the prayer for anticipatory bail and submitted that as per evidence collected during investigation,

the applicant fully participated in performing the caesarean operation of the deceased. It is further submitted that the aforesaid hospital was being illegally run by all the accused persons in a rented house and it was also found during investigation that no medical degree / diploma has been obtained by the applicant and she was working as a Physician / Surgeon in an illegal manner. Death of the wife of the informant has been caused by the applicant and other co-accused persons as they were well known of the fact that they are not competent doctors to perform the surgery, but despite that they proceeded with the same, which resulted into the death of the poor wife of the informant. It is a case of culpable homicide not amounting to murder and not a case of mere medical negligence and as such the applicant is not entitled for any relief.

6. In the present case, without having any valid degree / diploma to perform the surgery, the applicant proceeded to operate the pregnant wife of the informant resulting into her death.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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. 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 not a fit case for anticipatory bail to the applicant.

9. The anticipatory bail application is, accordingly, **rejected**.

Order Date :- 12.10.2023

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