

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11400 of 2023

Applicant :- Dr. Muntazim @ Muntajim

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

Counsel for Applicant :- Mohd. Jamshed Khan, Ashish Goyal

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Dr. Muntazim @ Muntajim** seeking anticipatory bail in Case Crime No. 312 of 2023, under Sections 420, 467, 468, 304 IPC and 15(2), 15(3) Indian Medical Council Act, Police Station Bahjoi, District Sambhal.

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

3. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. It is further submitted that the applicant is a registered practitioner and a certificate in this regard has been issued by the Regional Ayurvedic and Unani Officer, Moradabad, U.P., which is still valid. The caesarean delivery in the hospital is performed by Doctor Tabassum, who is eligible and competent surgeon. The death of the deceased has not occurred in the hospital of the applicant but as a matter of the fact her family members got her discharged from the hospital and when she was brought to Moradabad, she died on the way. It is further submitted that two female babies were born to the deceased out of which one could not survive and the condition of the deceased was well and she was healthy. It is also submitted that the present applicant has not committed any negligence and he was not responsible at all for the unfortunate death of the deceased. Nothing adverse has been found in the post mortem report of the deceased. It is further submitted that the hospital of the applicant is also registered with the department of Medical Health and Family Welfare, Government of Uttar Pradesh. The investigation of the case is going on and the applicant is cooperating with the same. It has

been submitted that in case applicant is granted anticipatory bail, he shall 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 operation of the lady was performed by the present applicant who was not eligible to perform the same, as he was not a registered Surgeon. It is further submitted that during investigation it has been found that all the documents relating to the registration of the hospital and the licence relating to the applicant are forged and fabricated documents. It is not a case of mere negligence but is related with the offence of culpable homicide not amounting to murder of the deceased. Offence is very serious.

5. In this matter from the perusal of the record it reveals that Smt. Soni, wife of Jagat Singh was admitted in Meerut Health Care and Child Care Centre where her caesarean delivery was performed by the applicant and one Dr. Tabassum but when her condition worsened, she was brought to Moradabad but could not survive. Inspection of the said hospital was made by Dr. Vishwas Agrawal, Deputy Chief Medical Officer, Sambhal in the same night and it was found to be an illegal and unauthorized hospital and the whole hospital and the O.T. was seized. F.I.R. was lodged on 23.6.2023 and investigation started, which is still going on. It also reveals from the perusal of the record that during investigation it has been found that all the documents relating to the registration of the hospital and the licence relating to the applicant are forged and fabricated documents. It is not a case of mere negligence but relates to the offence of culpable homicide not amounting to murder of the deceased.

6. 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.

7. Hence, considering the settled principles of law regarding

anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

8. The application is **rejected**.

Order Date :- 30.10.2023

safi