

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11458 of 2023

Applicant :- Madhuri Patel

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Bahadur Singh, Rajendra Singh, Sarvagya Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material available on record.
3. This application for anticipatory bail has been filed by applicant - **Madhuri Patel** in connection with Criminal Case No.5547 of 2021 (State Vs. Madhuri Patel and others) arising out of Case Crime No.433 of 2020, under Sections 498-A, 306 IPC, Police Station Mughal Sarai, District Chandauli.
4. The marriage of deceased Chandrabala Devi was solemnized with co-accused Anil Patel in the year 2008. Since marriage, she was subjected to cruelty and harassment for want of Rs.10 lakh as additional dowry and one Scorpio Car was also given by the informant to her in-laws. However, subsequently on 15.11.2020, her dowry death was caused in her matrimonial house. F.I.R. was lodged against her in-laws on 17.11.2020 under Sections 302, 498-A IPC and Section 3/4 Dowry Prohibition Act. After investigation, now charge-sheet has been submitted under Sections 498-A, 306 IPC.
5. It is submitted by the learned counsel for the applicant that the applicant is innocent and she has apprehension of her arrest in the above-mentioned case, whereas there is no credible evidence against her. She has been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been submitted. It is further submitted that the applicant is the mother-in-law of the deceased. The deceased was never tortured or harassed on account of any demand of additional dowry. As a

matter of fact, on the eve of diwali festival, when the deceased was bitterly scolding and beating his son as he had administered some gutka, her in-laws and other persons tried to pacify her not to beat the child on the eve of festival and subsequently in a fit of anger, she committed suicide by hanging herself. It is further submitted that in the post mortem report, the cause of death of the deceased is found as asphyxia as a result of antemortem hanging. It is further submitted that no witness including the family members of the deceased has averred before the I.O. in the statement u/s 161 Cr.P.C. that the deceased was instigated or abetted in any way by the applicant, which led her to commit suicide. It is further submitted that essential ingredients to constitute the offence under section 306 IPC are completely missing in this case. It is further submitted that except the ligature mark, no other injury has been found on the body of the deceased. Applicant is a lady having no criminal antecedents. She has been granted anticipatory bail during the course of investigation in Crl. Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. - 367 of 2021 by this Court vide order dated 18.1.2021 and the said liberty was not misused by the applicant. It is further submitted that the charge-sheet in this case was submitted, which was challenged by way of filing an Application u/s 482 Cr.P.C. No. - 17184 of 2021. It is further submitted that the applicant has been cooperative during the course of investigation. It is further submitted that no custodial interrogation is required in this matter from the applicant and as such he is entitled for anticipatory bail.

6. Per contra, learned A.G.A. opposed the prayer for anticipatory bail, but however he could not dispute the factual matrix of the matter as submitted by the learned counsel for the applicant.

7. From the perusal of the record, prima facie the essential ingredients to establish a case under Section 306 IPC appear to be missing. The mens rea on the part of the accused has to be established by the prosecution and there must be at least an indication that there was any intention on the part of the accused to abet the commission of suicide by the deceased, which is not appearing in this case and that is why the necessary element of abetment is missing from the allegations levelled in the FIR, which is undoubtedly an essential ingredient to establish the offence under Section 306 I.P.C.

8. In **Gurcharan Singh v. State of Punjab, (2017) 1 SCC 433** the Hon'ble Apex Court held that the basic ingredients of Section 306 IPC are suicidal death and abetment thereof. To constitute abetment, intention and involvement of accused to aid or instigate

commission of suicide is imperative. Any severance or absence of any of these constituents would militate against said indictment. Remoteness of culpable acts or omissions rooted in intention of accused to actualise the suicide would fall short of offence of abetment essential to attract Section 306 IPC. Contiguity, continuity, culpability and complicity of indictable acts or omission are concomitant indices of abetment. Section 306 IPC thus criminalises sustained incitement for suicide.

9. In **M. Arjunan v. State, (2019) 3 SCC 315** the Hon'ble Apex Court held that insulting deceased by using abusive language will not, by itself, constitute abetment of suicide. There should be evidence capable of suggesting that accused intended by such act(s) to instigate deceased to commit suicide. Unless ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC.

10. Although charge-sheet has been submitted in the present matter, but 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.

11. 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 a fit case for anticipatory bail to the applicant till end of the trial in the matter.

12. The anticipatory bail application is **allowed**.

13. In the event of arrest of the applicant in the aforesaid case crime, she shall be released on anticipatory bail till end of the trial 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;

(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 officer;

(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.

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

Order Date :- 28.10.2023

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