

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11835 of 2023

Applicant :- Shanu

Opposite Party :- State of U.P.

Counsel for Applicant :- Anubhav Kumar Vimal, Km. Surabhi

Counsel for Opposite Party :- G.A., Rakesh Kumar Verma

Hon'ble Nalin Kumar Srivastava, J.

1. Crl. Misc. Exemption Application is allowed.
2. This application has been moved on behalf of the applicant - **Shanu** seeking anticipatory bail in Case Crime No.140 of 2023 under Sections 498-A, 323, 377, 504, 506 IPC and Section 3/4 Dowry Prohibition Act, Police Station Chhajlet, District Moradabad.
3. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for the informant and perused the record.
4. Alleging demand of dowry, cruelty and harassment caused to the victim of this case, the F.I.R. was lodged on 21.7.2023 against in-laws of the informant / victim.
5. It is submitted by the learned counsel for the applicant that the applicant is the husband of the informant. He is innocent and has not committed any offence. There is no credible evidence against him. He has been falsely implicated in this case. It is further submitted that it is a case of matrimonial dispute. There is no injury report of the victim on record. Almost on the similar allegations, an F.I.R. as case crime no.156 of 2020 was lodged against the in-laws of the victim at P.S. Chandpur, District Bijnor and after investigation, charge-sheet has been submitted in that case. It is also submitted that the present F.I.R. has been lodged only to harass the applicant and his family members whereas investigation has already been completed in the first F.I.R. It is also submitted that all the allegations contained in the F.I.R. are false and frivolous and all the in-laws of the informant have been falsely implicated in this matter. It is further submitted that investigation into the matter is going on and the applicant is

cooperating with the I.O. of the case and as such he is entitled for anticipatory bail. Applicant has apprehension of his arrest in the above-mentioned case.

6. Per contra, learned A.G.A. for the State as well as learned counsel for the informant have opposed the prayer for anticipatory bail and it has been vehemently argued that even after lodging of the first F.I.R. in year 2020, the present applicant and his family members continued the offence of demand of dowry, harassment and cruelty to the lady victim of this case. It is also submitted that after being compelled by the continuous harassment and torture, the informant / victim has lodged the present F.I.R. in the year 2023, but however they could not dispute this factual aspect that there is no medical report of the injured on record.

7. It is further submitted that a Crl. Misc. Writ Petition No.13876 of 2023 was filed before this Court on 22.8.2023 and anticipatory bail application before the Sessions Court was filed on 22.9.2023 i.e. during the pendency of the aforesaid writ petition, which was disposed of by this Court vide order dated 26.9.2023, but in the anticipatory bail application moved before the Sessions Court, the factum of pendency of writ petition no.13876 of 2023 was concealed whereas it was incumbent upon the applicant to fairly state all the material facts and circumstances in the anticipatory bail application and affidavit annexed with it, which means that the present applicant did not come with clean hands before the Sessions Court. It is also submitted that nowhere in the anticipatory bail application along with the affidavit or in the supplementary affidavit it has been mentioned that the factum of pendency of writ petition no.13876 of 2023 was brought to the notice of the Sessions Court in the anticipatory bail application moved before that Court. It is further submitted that since the applicant did not come up with clean hands, no relief may be granted to him.

8. I have considered the submissions made by the learned counsel for the parties and have gone through the entire record carefully.

9. In **Pratibha Manchanda and another vs. State of Haryana and another, (2023) 8 SCC 181**, the Hon'ble Apex Court has held in paragraph 31 that "it is essential to ensure that all the material facts are brought on record and thereafter only the discretionary jurisdiction is exercised in accordance with the fundamental principles of anticipatory bail laid down in various decisions over time by this Court."

10. In **Dalip Singh vs. State of Uttar Pradesh, (2010) 2 SCC 114 and Kishore Samrite vs. State of U.P., (2013) 2 SCC 398**, it has been clarified that a party who approaches the court by suppressing the facts and to mislead the Court is not entitled to be heard on merits and that it is a bounden duty of anyone approaching the Courts to state the whole case fully and fairly and any attempt to mislead and approach with unclean hands should be dealt with severely.

11. In **Prestige Lights Ltd., v. State Bank of India, (2007) 8 SCC 449**, the Hon'ble Apex Court impressed upon that if the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter.

12. In **Arunima Baruah v. Union of India, (2007) 6 SCC 120**, the Hon'ble Supreme court has held that it is trite law that to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. Material fact would mean material for the purpose of determination of the lis. It was further held that it is also a trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands.

13. After hearing learned counsel for the parties and considering the facts and circumstances of the case and in view of the law laid down by the Hon'ble Apex Court, I deem it not a fit case to grant anticipatory bail to the present applicant.

14. Hence, the anticipatory bail application is **rejected**.

Order Date :- 16.11.2023

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