

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11540 of 2023

Applicant :- Smt. Sukhda Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Vaibhav Shandilya, Sr. Advocate

Counsel for Opposite Party :- G.A., Ravesh Kumar Singh

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Vivek Shandilya, learned Senior Counsel assisted by Sri Vaibhav Shandilya, learned counsel for the applicant, Sri Ravesh Kumar Singh, learned counsel for the informant, Sri Deepak Kumar Singh, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.78 of 1990, under Sections 498-A, 306 and 201 IPC, Police Station Allau, District Mainpuri, during the pendency of trial.
4. As per prosecution story, the applicant is stated to have entered into illicit relationship with the co-accused person Chandrajeet, who happens to be the husband of the deceased person. The applicant and other co-accused persons are stated to have even subjected her to cruelty and abetted her to commit suicide and even disposed of the said dead body of the deceased person. After getting the knowledge of the said death of the deceased person, the FIR was instituted by the informant.
5. Learned Senior Counsel for the applicant has stated that the rigors of the judgment of this Court passed in **Shivam vs. State of U.P. and Another, 2021 SCC OnLine All 264** does not apply to the present case as the applicant is a lady and the matter was stayed by this Court in petition U/s 482 No.1651 of 1991 vide order dated 24.8.1991 and the said stay was extended from time to time. Learned Senior Counsel has further stated that in the light of the judgment of Apex Court passed in **Asian Resurfacing of Road Agency Pvt. and Another vs. Central Bureau of Investigation, 2018 (16) SCC 299**, the said interim protection was set-aside, as such the applicant had filed another petition U/s 482 No.2643 of 2023, which was also disposed of with the directions to the applicant to apply for bail within a

period of two weeks vide order dated 09.02.2023. In compliance of the said order, the applicant had applied for anticipatory bail before the Sessions Judge, Mainpuri and the same was dismissed by him, as such the present anticipatory bail has been filed.

6. Learned Senior Counsel for the applicant has further stated that the applicant has not been declared a proclaimed offender under the provisions of Sections 82 and 83 Cr.P.C. Learned Senior Counsel has also placed reliance on Section 82(4) Cr.P.C. and has stated that no proclamation has been made under Section 82(4) Cr.P.C. Learned Senior Counsel has further stated that the applicant is entitled for anticipatory bail as the rigors of the judgment of Apex Court passed in **Lavesh vs. State (NCT of Delhi), (2012) 8 SCC 730** do not apply to the present case. The applicant is a lady and has not misused the opportunity granted and is ready to co-operate in trial. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

7. Per contra, learned counsel for the informant and learned A.G.A. have vehemently opposed the anticipatory bail application on the ground that the present anticipatory bail application is not maintainable in light of the judgment of the Apex Court passed in **Lavesh (supra)**, as already the proceedings under Sections 82 and 83 Cr.P.C. are complete against the applicant.

8. Learned counsel for the informant has further stated that the proceedings under Section 83 Cr.P.C. are only taken up after the completion of proceedings under Section 82 Cr.P.C., as such the applicant is a proclaimed offender and in the light of paragraph 43(3)(8) of the judgment of this Court passed in **Shivam (supra)**, the applicant is not entitled for anticipatory bail.

9. Learned A.G.A. has stated that the applicant is involved in forum shopping as she has filed two petitions U/s 482 Cr.P.C. and failed and has got the proceedings stayed at one petition or the other for a period of 33 years. She is not entitled for anticipatory bail in the light of para- 43 of **Shivam (supra)**.

10. After hearing learned counsel for the parties and taking into consideration the fact that the matter pertains to the year 1990 and about 33 years have passed since the date of offence and the applicant is approaching different Courts at different times and he had even filed two petitions U/s 482 Cr.P.C. before this Court, which tantamounts to forum shopping and also taking

into consideration para- 43 of **Shivam (supra)**, I do not find it a fit case for grant of anticipatory bail to the applicant.

11. The present anticipatory bail application is hereby found devoid of merits and is accordingly **rejected**.

12. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 18.10.2023

Ravi Kant

(Krishan Pahal, J.)