

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11712 of 2023

Applicant :- Mamta Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinod Kumar Yadav

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. This application has been moved on behalf of the applicant ***Mamta Tiwari*** seeking anticipatory bail in Case Crime No. 259 of 2023, under Sections 498-A, 323, 304-B IPC and 3/4 D.P. Act, Police Station Jahanaganj, District Azamgarh.
3. The deceased, Pritee was subjected to cruelty and harassment for demand of additional dowry by her in-laws and subsequently, her dowry death was caused. F.I.R. was lodged on 09.06.2023 and investigation started, which is still 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. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It has been submitted that in case applicant is granted anticipatory bail, she shall not misuse the liberty of bail and would obey all conditions of bail.
5. It is further submitted that the present applicant is the sister-in-law (Jethani) of the deceased and she has absolutely no concern with the unfortunate death of the deceased. It is next submitted that the deceased was never tortured by any of her in-laws nor any demand of dowry was made. It is next submitted that the deceased was facing gynec problem and she was admitted in the hospital for the treatment of the same. It is also submitted that the informant, father of the deceased had himself stated before the I.O. that when he saw the dead body of her daughter, he had refused to take any action against her in-laws. It is further submitted that it was a case

of natural death. It is also submitted that the death of the deceased being a natural death, no post mortem was conducted and the husband of the deceased and her in-laws were present at the time of cremation. It is further submitted that father of the deceased and other family members were also present at the time of funeral as well. It is next submitted that the present applicant lived separately with deceased and her husband, Shailendra Tiwari. It is also submitted that charge sheet has been submitted against two co-accused persons, namely, Shailendra Tiwari and Harish Chandra Tiwari and investigation in respect of the present applicant is still going on. It is further submitted that the independent witnesses have stated before the I.O. that the family members of the deceased were not intending to take any legal action against in-laws of the deceased at the time of cremation but subsequently, just to grab the money from in-laws of the deceased, F.I.R. was lodged against the present applicant. It is next submitted that the present applicant is a lady and having no criminal history to her credit and as such, she is entitled for anticipatory bail.

6. Learned A.G.A. opposed the prayer for anticipatory bail and it has been argued that all the material witnesses including the family members of the deceased have corroborated the prosecution version in their statements under Section 161 Cr.P.C. It is further submitted that death of the deceased occurred otherwise than natural circumstances in the hospital. It is further submitted that no cogent evidence has been collected by the I.O. during investigation regarding separate living of the present applicant. It is next submitted that due to some ulterior motive, no post mortem of the body of the deceased was conducted by her in-laws. The dowry death of the young deceased has been occurred within seven years of her marriage otherwise than in normal circumstances in the hospital and keeping in view the gravity and seriousness of the offence, the present applicant is not entitled for anticipatory bail.

7. In ***Sushila Aggarwal and others vs. State (NCT of Delhi) and another***, (2020) 5 SCC 1, the Hon'ble Apex Court has settled 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, 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.

9. The application is **rejected**.

Order Date :- 27.10.2023

Shivangi