

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11686 of 2023

Applicant :- Amir

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Nasir Hussain, Akhilesh Kumar
Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Nasir Hussain, learned counsel for the applicant, Sri Prashant Ji Pandey, learned counsel for the informant and Sri S.P. Pandey, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.0096 of 2022, registered under Sections 498A, 376, 354, 323, 506 IPC and 3/4 Dowry Prohibition Act at Police Station- Kotwahi Dehat, District Saharanpur with a prayer to enlarge him on anticipatory bail.
4. As per prosecution story, the marriage of the brother of the applicant was solemnized with the informant on 11.03.2018 as per Muslim Rites. Subsequent to it, the applicant and other co-accused persons are stated to have subjected her to cruelty for demand of Rs.25 lakhs and a big car, thereby are stated to have retained the son born out of wedlock, aged about 2 years, with them and assaulted the informant and sent her out of their house on 14.02.2022 at about 7:00 a.m.
5. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. The FIR is delayed by more than one day and there is no explanation of the said delay caused. The victim has refused to get herself medically examined, as such the prosecution story stands falsified. Learned counsel has further placed reliance on the statement of the victim recorded under Section 164 Cr.P.C., whereby she has escalated the allegations against the applicant of having raped her several times. The present case is a classic example of the misuse of dowry laws.

6. Learned counsel for the applicant has further stated that the applicant was granted anticipatory bail till the submission of report under Section 173(2) Cr.P.C. vide order dated 17.08.2022 passed by Sessions Judge, Saharanpur. The applicant has not misused the opportunity granted earlier and is ready to do so during trial also. 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. There are no criminal antecedents of the applicant. The applicant has apprehension of his arrest.

7. Per contra, learned A.G.A. and learned counsel for the informant have vehemently opposed the anticipatory bail application on the ground that the allegations against the applicant are serious as he has tarnished the pious relationship between him and sister-in-law.

8. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A., taking into consideration the fact that the applicant was on anticipatory bail till the submission of report under Section 173(2) Cr.P.C. vide order dated 17.08.2022 of the Sessions Judge, Saharanpur and also the fact that there is no injury report to corroborate the prosecution story, and considering the nature of accusations and antecedents of the applicant, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "***Sushila Aggarwal Vs. State (NCT of Delhi)***, (2020) 5 SCC 1". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

9. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Amir** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii). that 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;
- (iii). that the applicant shall not leave India without the previous permission of the court;
- (iv). that in case charge-sheet is submitted the applicant shall not tamper

with the evidence during the trial;

(v). that the applicant shall not pressurize/ intimidate the prosecution witness;

(vi). that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

(vii). that in case of breach of any of the above conditions the court concerned shall have the liberty to cancel the bail.

10. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 06.11.2023

Ravi Kant

(Krishan Pahal, J.)