

**Court No. - 72**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 11949 of 2023

**Applicant :-** Lubana

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Amrita Singh, Mahtab Alam

**Counsel for Opposite Party :-** G.A., Rajneesh Kumar Sharma

**Hon'ble Krishan Pahal, J.**

1. List has been revised.
2. Heard Ms. Amrita Singh, learned counsel for the applicant, Sri Rajesh Kumar Namdev, Advocate holding brief of Sri Rajneesh Kumar Sharma, learned counsel for the informant and Sri R.P. Patel, 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.112 of 2022, registered under Sections 147, 149, 323, 336, 504, 332, 353, 427, 308 IPC & Section 7 of Criminal Law Amendment Act at Police Station- Amroha Nagar, District Amroha with a prayer to enlarge her on anticipatory bail.
4. As per prosecution story, the named accused persons, twelve in all, and about 35-40 persons are stated to have asked the informant and other persons who were to stop DJ that was being run during Holi celebrations on 18.03.2022 and are stated to have assaulted several persons including brick batting.
5. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. The FIR is delayed by about nine hours and there is no explanation of the said delay caused. The applicant is a lady and is not named in the FIR. Her name has come up later on in the statement of the neighbour Ashok. The case of the applicant is at a different footing to the named accused persons. Learned counsel has further stated that had the applicant been involved in the said offence, she would have been named in the FIR itself and being a neighbour is well known to the informant.
6. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against her. 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 her arrest. Learned counsel for the applicant undertakes that she has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

7. Per contra, learned counsel for the informant has vehemently opposed the anticipatory bail application on the ground that the applicant has been identified in the CCTV footage fixed at the house of Ravi and Rajneesh Kumar Sharma, as such she is not entitled for anticipatory bail.

8. Learned A.G.A. has also opposed the anticipatory bail application but could not dispute the fact that the applicant has no criminal antecedents and is not named in the FIR.

**9. The case of the applicant stands distinguished to the named accused persons.**

10. 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 is not named in the FIR and has no criminal antecedents to her credit, 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.

11. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Lubana** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal bond 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 herself 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 her 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.

12. 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 :- 7.11.2023**

Ravi Kant

**(Krishan Pahal, J.)**