

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11842 of 2023

Applicant :- Mohammad Wali

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Raja Ullah Khan

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicant- **Mohammad Wali** in connection with Case Crime No. 645 of 2020 under sections 323, 506 IPC & Section 3, 5 (1) of of Uttar Pradesh Prohibition of Unlawful Conversion Ordinance, 2020, P.S.- Kotwali, District- Shahjahanpur.

3. It is alleged that Mohd. Sayeed, the main accused hiding his religion developed friendly relations with the victim of the case and tried to convert her religion with the assistance of his family members including his brother, Fareed, when this fact was disclosed, the victim lodged the FIR against the named accused persons, now the charge sheet has been submitted.

4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Charge sheet in the matter has been submitted. It is further submitted that the present applicant has actually no role in the commission of the crime as alleged in the FIR even the victim of the case in her statement under Sections 161 and 164 Cr.P.C. has not made any specific allegation against the present applicant regarding assault or threatening or even attempt of conversion of the victim of the case. It is further submitted that all the major offences have been alleged against the main accused Mohd. Sayeed @ Sunil. It is further submitted that earlier an Application U/S 482 No. 24670 of 2022 was moved by the applicant along with other co-accused persons but the same was disposed of by this Court vide order dated 22.9.2022 and the court declined to

quash the charge sheet in this matter. It is further submitted that the applicant has been cooperative throughout the investigation and now after submission of the charge sheet no custodial interrogation is required. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail. It is lastly submitted that co-accused Mohammad Fareed Bhai has been granted anticipatory bail by this Court on 5.10.2023 vide Criminal Misc. Anticipatory Bail Application No. 10337 of 2023.

5. Learned A.G.A. has opposed the prayer for anticipatory bail but however could not dispute this factual position that the main offence is alleged against the co-accused Mohd. Sayeed and not against the present applicant.

6. It reveals from the perusal of the record that no process under Section 82/83 Cr.P.C. has been issued against the applicant till date and he has cooperated during the investigation.

7. Although the charge sheet has been submitted in this matter but in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court 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 and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for

anticipatory bail to the applicant till conclusion of trial in the matter.

9. The anticipatory bail application is **allowed** accordingly.

10. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail on his furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

i. 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.

ii. The applicant shall not pressurize/ intimidate the prosecution witness.

iii. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

iv. The applicant shall not leave India without prior permission of the Court and if he has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

11. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicant in accordance with law.

Order Date :- 22.11.2023

safi