Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11631 of 2023

Applicant :- Mudassir
Opposite Party :- State of U.P.
Counsel for Applicant :- Abhinav Singh
Counsel for Opposite Party :- G.A.,Sushil Kumar Pandey

Hon'ble Krishan Pahal,J.

1. List has been revised. Heard Ms. Katyayini Singh, learned counsel for the applicant and Sri Sushil Kumar Pandey, learned counsel for the informant as well as Sri S.P. Pandey, learned A.G.A. for the State and also perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 206 of 2021, under Sections 498A, 323, 504, 506, 313 IPC and 3/4 of Muslim Women (Protection of Rights on Marriage) Act, 2019, Police Station Chhapar, District Muzaffarnagar, with a prayer to enlarge him on anticipatory bail.

3. As per prosecution story, the marriage of the applicant was solemnized with the sister of the informant as per Muslim rites on 1.3.2020. Subsequent to it, the applicant and the other family members are stated to have subjected her to cruelty for a demand of dowry and on 17.6.2020 at about 11.00 pm, they are stated to have assaulted her, thereby keeping her in her room, leading to miscarriage of her child. Thereafter, on 14.8.2021, the sister of the informant is stated to have given birth to a male child.

4. Learned counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has the apprehension of his arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. Learned counsel has next stated that the allegations of miscarriage stand falsified by the consent of her miscarriage been given by her. Learned counsel has placed much reliance on the statement of the doctor undertaking the said miscarriage, who had stated that she had to conduct the abortion of the victim on 20.6.2020, as the said foetus was getting dangerous to her life.

5. Learned counsel has further stated that the applicant was doing a job at Saudi Arabia and was not present in India itself from 23.11.2020 to 28.8.2023. The allegations are general in nature against all the accused persons. Learned counsel has next stated that three of the co-accused persons namely, Shivu (brother-in-law) and two sisters-in-law namely, Gajala and Farhaal, have been exonerated by the investigating officer. Learned counsel has placed reliance on the opinion of the investigating officer, who had stated that the applicant was at Saudi Arabia at the time of institution of the present FIR. It is further stated that the applicant was not present in India about one year before the date of institution of the FIR. Learned counsel has stated that there is no medical evidence to corroborate the prosecution story. The present FIR is clear misuse of the dowry laws.

6. 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. It is further submitted that the applicant has no criminal antecedents. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned A.G.A. and learned counsel for the informant have vehemently opposed the prayer for grant of anticipatory bail but unable to dispute the submissions raised by the learned counsel for the applicant that the applicant was not present in India at the time of institution of the FIR.

8. On due consideration to the arguments advanced by the learned counsel for the parties and in view of the law laid down by the Apex Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**", the applicant is entitled to be granted anticipatory bail in this case.

9. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is **allowed**.

10. In the event of arrest of the applicant, **Mudassir** involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

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 previous permission of the court;
iv. that 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;

11. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

12. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 6.11.2023
Shalini

Digitally signed by :-
SHALINI JAISWAL
High Court of Judicature at Allahabad