

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12084 of 2023

Applicant :- Dr. Ashok Kumar Rai

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

Counsel for Applicant :- Pankaj Roy

Counsel for Opposite Party :- G.A.,Sanjay Kumar Mishra

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicant and learned Additional Government Advocate for the State.Learned counsel for the informant is also present.

2. Counter affidavit and supplementary affidavit filed today are taken on record.

3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No. 1456 of 2007, under sections 304-A, 315, 323, 506 IPC, P.S. Kotwali Sadr, District Deoria, during the pendency of bail application.

4. According to the prosecution story, on 29-07-2007, a complaint was given by the informant at the local police station to the effect that wife of his younger brother, namely, Smt. Usha Pandey, was admitted on 28-07- On 2007, at around 10:30 in the morning at Savitri Nursing Home, ITI Deoria, where the applicant who is a doctor said that the mother and child are healthy and asked for her delivery. It is also alleged that the concerned doctor called the informant and asked her to immediately deposit the fees of operation, medicine, and consent form and told that the operation is to be done immediately otherwise the mother and child would be in danger. It is alleged that the consent form was signed by the younger brother of the informant but the operation could not be performed. It is further alleged that when the condition started worsening, the doctor said that he had full responsibility of the patient and the child. There is no need to be panic. It is further alleged that the Doctor after an hour told that the anesthetic doctor has not come and the operation will take place upon his arrival. It is further alleged

that after being taken to the operation at about 5:30 pm, the doctor's assistant said that the patient's condition is very serious and also told that if all the family members sign the consent form, thereafter, the operation would take place. It is further alleged that thereafter the consent was signed in hasty manner and just after five minutes the staff of the hospital brought a dead foetus and it is alleged that there is negligence on the part of the doctor and on protest they were beaten.

5. It is submitted by learned counsel for the applicant that applicant/accused is innocent and is being unnecessarily harassed by being made an accused. The applicant has no role in the alleged incident. The applicant always works to serve the patients and practices the sacred profession of medicine. It is further stated that the applicant after registration of the FIR approached this Court by filing criminal misc Writ Petition No. 11670 of 2007, in which this court had granted interim protection of arrest vide order dated 16.08.2007. It is further stated that the investigating Officer also wrote the CMO to constitute a medical board and in compliance of the said letter, CMO constituted a Medical Board jointly with Chief Medical Superintendent District Women Hospital Deoria and submitted the enquiry report before the Investigating Officer of I.G. Police to the effect that there is no negligence/careless caused by the applicant in treatment of victim. Thereafter, the Investigating Officer submitted the final report in the matter, whereupon informant filed a protest petition and thereafter applicant has been summoned in the aforesaid sections vide order dated 15.09.2008. It is further submitted that applicant again approached this Court by filing 482 Application No. 28703 of 2008 wherein interim protection has been granted in favour of the applicant. It is further submitted that thereafter the said 482 petition has been dismissed vide order dated 22.11.2021 for want of prosecution. Thereafter, NBW has been issued against the applicant 15.10.2008. It is further submitted that applicant also challenged the NBW by filing criminal revision before the court below, which has been dismissed by the court below. Hence the present anticipatory bail application after rejection of the anticipatory bail application by the court below.

6. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case. The

applicant is having definite apprehension that he may be arrested by the police any time. It is further submitted that the applicant has no criminal antecedents. It is further submitted that there is no negligency on the part of the applicant.

7. Learned AGA as well as learned counsel for the informant have opposed the prayer for bail and submitted that there is negligency on the part of the applicant and the proceedings under Section 82 Cr.P.C. has also been initiated against the applicant.

8. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, as well as the medical report, prima face, no negligence is found on the part of the applicant, he is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)-2020 SCC Online SC 98***. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

9. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant Dr. Ashok Kumar Rai involved in the aforesaid crime be released on anticipatory bail on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(1) 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; and

(2) The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(3) The applicant shall surrender his passport, if any, to the concerned Court forthwith. His passport will remain in custody of the concerned Court.

(4) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for

evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

(5) In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.***

(6) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

10. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

11. With the aforesaid observations/ directions, the application stands **disposed of.**

Order Date :- 28.11.2023

RavindraKSingh