

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12356 of 2023

Applicant :- Kamlesh Pathak

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

Counsel for Applicant :- Sudeep Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant as well as learned A.G.A for the State and perused the record.
2. The present anticipatory bail application has been filed on behalf of the applicant **Kamlesh Pathak** in Case Crime No. 147 of 2022, under Sections 498-A, 323, 376, 511 IPC and 3/4 D.P. Act, Police Station Kotwali Dehat, District Mirzapur with a prayer to enlarge him on anticipatory bail.
3. Facts in brief are that the informant was married on 18.4.2018 with Anoop Pathak. The applicant is father-in-law (Sasur) of the informant/ victim. As per allegation in the F.I.R, she was subjected to cruelty on account of demand of dowry and harassment by the husband and the other members of the family. The husband lived at Surat and she also lived together with him but he did not take her with him instead he made demand of Rs.5 Lakhs. It is also alleged in the F.I.R that the husband made unnatural intercourse with her and father-in-law, the present applicant also attempted to establish sexual relation with her.
4. It is submitted by learned counsel for the applicant that the allegations made in the F.I.R are false. There is nothing on record to show that she was subjected to cruelty either by husband or by the other family members of the family in relation to demand of dowry with the informant. It is also submitted that the conduct of the informant was not good and that was the reason she was objected to by the family members as a result of which she became enraged and lodged this F.I.R. Further submitted that all the members of the family lived in same house, therefore, there is no possibility of making any attempt to establish physical relation with the informant by the applicant in the presence of his son and wife. Medical evidence does not help the prosecution case.

5. It is also submitted that the matter was referred to the mediation but on account of misconduct of the informant it failed. After completion of investigation, charge sheet has been submitted. The applicant is under apprehension of arrest, so request for anticipatory bail. It is also submitted that during investigation the applicant alongwith other co-accused persons had approached this Court through Criminal Misc. Anticipatory Bail Application No. 12695 of 2022 wherein vide order dated 23.2.2023 protection was granted to them till submission of police report under Section 173(2) CrPC. It is also submitted that the applicant has not misused the said liberty.

6. Learned A.G.A opposed the prayer for grant of anticipatory bail and urged that in this case the allegations made in the F.I.R has substance. The victim /informant who was wedded to Anoop Pathak, was subjected to cruelty in relation to demand of dowry. The husband was in relation with other ladies whose photos were seen by the informant herself in his mobile phone. It is also urged that before mediation the informant was ready to go to live with her husband but he refused to take her with him that was the reason the mediation proceedings came to an end unsuccessfully. The applicant is not entitled for anticipatory bail as sufficient and ample evidence has been collected against him during course of investigation.

7. Considering the overall facts and circumstances of the case and submissions made by the learned counsel for the parties and perusal of record and without expressing any opinion on the merits of the case and considering the nature of accusation and his antecedents, the applicant is entitled to be released on anticipatory bail in this case till end of trial in view of the law laid down by the Hon'ble Supreme Court in the case of **Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC Online SC 98**.

8. The application is **allowed** accordingly.

9. In the event of arrest of the applicant, 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 make himself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

10. In case of default of any of the conditions, the same may be a ground for cancellation of protection granted to the applicant.

Order Date :- 8.11.2023

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