

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12123 of 2023

Applicant :- Dr. Bharat Prasad Jaiswal

Opposite Party :- State of U.P.

Counsel for Applicant :- Vishal Jaiswal

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Mr. Vishal Jaiswal, learned counsel for the applicant and learned Additional Government Advocate for the State.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.219 of 2022, under Sections 376 and 323 IPC, Police Station Mubarakpur, District Azamgarh.

3. Learned counsel for the applicant submits that the applicant is suffering from neck cancer and his treatment is going on, due to this reason, the instant application has been filed on behalf of his wife, namely, Saroj Jaiswal. He further submits that the applicant has been falsely implicated in the present case just to harass the applicant in fact no such incident has taken place as alleged in the impugned FIR. The applicant has never committed any offence as alleged in the impugned FIR. The victim in her statement recorded under Sections 164 Cr.P.C. has stated that she was having love affairs with the applicant and she made physical relation with the applicant with her own sweet will meaning thereby the victim is a consenting party. The victim is major aged about 35 years. He further submits that earlier the applicant has approached this Court by filing Criminal Misc Writ Petition No.14216 of 2022 challenging the FIR in which protection was granted till filing of charge sheet. Thereafter charge sheet was filed, which was challenged by filing Application u/s 482 No.14529 of 2023, which was disposed of with the direction to the applicant to move discharge application and till disposal of discharge application, protection was granted to the applicant. He further submits that prima facie no offence under Section 376 IPC is made out against the applicant. The applicant is having previous criminal history of one case and the same has been mentioned in paragraph 25 of the affidavit. He further submits that applicant has apprehension of

imminent arrest and in case, the applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

4. Learned A.G.A. has vehemently opposed the prayer for anticipatory bail of the applicant but could not dispute the aforesaid contentions raised by learned counsel for the applicant.

5. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of 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.

6. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant-**Dr. Bharat Prasad Jaiswal**, involved in the aforesaid case crime be released on anticipatory bail till conclusion of trial 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:-

(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.

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

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

(iv) 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.

(v) 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***.

(vi) 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.

7. 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.

8. With the aforesaid observations/ directions, the application is **disposed of.**

Order Date :- 8.11.2023

Ajeet