

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12157 of 2023

Applicant :- Abid Ali And 3 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Sayed Sohail Asgar

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

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

2. This application for anticipatory bail has been filed by applicants- 1. Abid Ali, 2. Wajid Ali, 3. Tarannum Fatima and 2. Tabassum Bano @ Fatima in connection with Case Crime No.30 of 2023, under Sections 3/5 (1) of U.P. Prohibition of Unlawful Conversion of Religion Act, Police Station Pashchim Sharira, District Kaushambi.

3. The hindu lady was eloped by main accused Arif, who tried to convert her into his religion and also kept her with him and during her stay with main accused Arif, the present applicant along with some other co-accused persons also pressurized her for conversion. Ultimately death of the victim occurred and after filing of the FIR now the charge sheet has been submitted.

4. It has been submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. After investigation charge sheet has been submitted in the matter. It is further submitted that only role assigned to the present applicants is that they had participated in the Panchayat, which took place in connection with the alleged incident. The independent witnesses have stated before the I.O. of the case that the victim was taken by main accused Arif and it was he, who tried to convert the religion of the victim and also kept her with him. The present applicants have no relation with the main accused and they have been cooperative during course of investigation. The applicants have no criminal history to their credit and now after filing of the charge sheet they are entitled for anticipatory bail. It is

further submitted that co-accused Kudrat and Banne Khan have already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 9157 of 2023 by order dated 16.8.2023. In case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. has opposed the prayer for anticipatory bail but has not disputed the fact that identically placed co-accused persons have already been granted anticipatory bail by this Court.

6. In the present case after filing of the charge sheet no custodial interrogation is required. The offences levelled against the applicants are punishable with the imprisonment for a maximum period upto seven years.

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 controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

8. 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.

9. 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.

10. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants 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 applicants till conclusion of trial in the matter.

11. The anticipatory bail application is allowed accordingly.

12. In the event of arrest of the applicants in the aforesaid case crime, they shall be released on anticipatory bail on their 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 applicants 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 applicants shall not pressurize/ intimidate the prosecution witness.

iii. The applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

iv. The applicants shall not leave India without prior permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. concerned.

13. 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 applicants in accordance with law.

Order Date :- 21.11.2023

Fhd