

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12348 of 2023

Applicant :- Devi Pandey @ Devi

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Yogesh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Mr. Yogesh Kumar Pandey, 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.144 of 2023, under Sections 363, 323, 366, 376, 120--B IPC and 5j(2) 6 POCSO Act, Police Station Raunapar, District Azamgarh.

3. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case just to harass the applicant. The applicant is a lady aged about 53 years and suffering from several old disease. The applicant has been implicated being the mother of co-accused Brajesh Pandey, who is already in jail. The applicant has no concern with the alleged incident. The incident is alleged to have taken place on 15.12.2017 whereas the impugned FIR has been lodged on 16.05.2023 i.e. after a long gap of 8 years but there is no proper explanation for lodging the FIR delayed. Charge sheet has already been submitted against the applicant. He further submits that no offence under Section 376 IPC is made out against the applicant because the applicant is a lady. The applicant is having no criminal antecedent as has been mentioned in paragraph 8 of the affidavit.

4. Learned A.G.A. has opposed the prayer for anticipatory bail of the applicant.

5. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, she 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-**Devi Pandey @ Devi**, involved in the aforesaid 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 her 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 her passport, if any, to the concerned Court forthwith. Her passport will remain in custody of the concerned Court.

(iv) The applicant shall file an undertaking to the effect that she 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 her bail and proceed against her 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 :- 21.11.2023

Ajeet