

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12043 of 2023

Applicant :- Brajesh And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Suresh Kumar Yadav, Byas Kumar Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Compliance affidavit filed today in the Court, the same is taken on record.
2. In pursuance of order of this Court dated 9.11.2023, applicant no.1- Brijesh (husband) and the victim- Smt. Puspa Devi (wife) are present before this Court and duly identified by counsel for the applicants. The parties have filed joint affidavit, the same is taken on record.
3. Learned counsel for the applicants has submitted that the impugned FIR has been lodged by the father of the victim. The victim has solemnized marriage with the applicant no.1 on 6.8.2008 and out of their wedlock, they have been blessed with one male child and one female child. Copy of marriage certified is annexed as Annexure No.2 to the affidavit.
4. Heard Sri Byas Kumar Prasad, learned counsel for the applicant and learned A.G.A. for the State as well as perused the record.
5. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that the parties have solemnized marriage with each other on 6.8.2008 and they are living as husband and from their wedlock, they have been blessed with one male child and one female child. The applicant has no previous criminal history. Learned counsel for the applicant further submitted 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 investigation/trial.

6. Learned A.G.A. opposed the prayer for bail but could not dispute the submission advanced by learned counsel for the applicant.

7. Considering the facts and circumstances of the case as well as the statement of the victim given before this Court that the victim has solemnized marriage with the applicant on her own sweet will and they have two children from their wedlock and they are living happy marriage life, no useful purpose would be served to keep the matter pending. Accordingly, the present anticipatory bail application is allowed.

8. In the event of arrest, the applicants shall be released on anticipatory bail. Let the applicants- **Brajesh, Lala Ram and Devendra** involved in Criminal Case No.1294 of 2012 arising out of Case Crime No.81 of 2008, under Sections 363 and 366 IPC, Police Station Patiyali, District Kashi Ram Nagar (Kashganj), be released on anticipatory bail in light of the law laid down by the Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98** 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 applicants shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation.

(ii) 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 them from disclosing such facts to the Court or to any police officer.

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

(iv) The applicants shall surrender their passport, if any, to the concerned Court forthwith. Their passport will remain in custody of the concerned Court.

(v) The applicants shall file an undertaking to the effect that

they 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 applicants.

(vi) In case, the applicants 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**.

(vii) The applicants 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 their bail and proceed against his in accordance with law.

9. 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 applicants.

10. With the aforesaid observations/ directions, the application stands **allowed**.

Order Date :- 30.11.2023
Krishna*