

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12099 of 2023

Applicant :- Kesh Kali @ Savitri

Opposite Party :- State of U.P.

Counsel for Applicant :- Raj Kumar Sharma, Sunil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant - **Kesh Kali @ Savitri** seeking anticipatory bail in Case Crime No.721 of 2010, under Sections 498A, 306, 506 IPC, Police Station Akbarpur, District Kanpur Dehat.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. The prosecution story, as unfolded in the F.I.R., is that the marriage of the deceased was settled with the son of the present applicant, who happens to be the mother-in-law of the deceased, and the engagement had taken place, but before marriage, Rs.1 lakh was demanded by the applicant and her family members and when the informant expressed his inability to pay the same, the marriage was cancelled and the daughter of the informant committed suicide by hanging. F.I.R. was lodged on 12.11.2010 and after investigation, charge-sheet has been submitted in the matter.

4. Learned counsel for the applicant submits that that applicant is innocent and she has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against her. She has been falsely implicated in this matter. Allegations levelled against the applicant are false. It is further submitted that the marriage between the deceased and the son of the applicant was not performed. No demand of dowry was made by the applicant or any of her family members. It is further submitted that the essential ingredients to constitute the offence under section 306 IPC are completely missing in this matter. It is further submitted that the witnesses, whose statements have been recorded by the I.O., have not supported the prosecution version so far. Applicant is an old lady and is suffering from asthmatic disease. It is also

submitted that the applicant never abetted or instigated the deceased to commit suicide. She has no criminal antecedents to her credit. It is also submitted that earlier an application u/s 482 No.31043 of 2011 was moved by the present applicant wherein the proceedings of the case concerned were stayed by this Court vide order dated 31.10.2011, but however following the dictum laid down by the Hon'ble Apex Court in Asian Resurfacing of Road Agency Pvt. Ltd and another Vs. Central Bureau of Investigation, (2018) 16 SCC 299, on 13.10.2021, the trial court proceeded with the matter and the stay order was presumed to be vacated by the court concerned and the proceedings were again initiated.

5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been vehemently argued that the cause of the death of the deceased has been found asphyxia as a result of ante-mortem hanging in the postmortem report and after collecting ample and sufficient evidence, charge-sheet in this matter has been submitted. It is further submitted that after settlement of marriage, continuous demand of dowry was made by the applicant and her family members, which the informant was not capable to pay and this conduct of the applicant and her family members was really in the form of abetment to suicide. It is further submitted that the call details have also been made part of the case diary by the Investigating Officer which also reflects that the demand of dowry was made by the applicant and her family members.

6. In the light of the relevant laws on the subject, the essential ingredients of the offence under section 306 IPC may be summarized like this :

'(i) the abetment; (ii) the intention of the Accused to aid or instigate or abet the deceased to commit suicide. The act of the Accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the Accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, Accused cannot be convicted under Section 306 Indian Penal Code.'

7. In Ude Singh and Others Versus State of Haryana, (2019) 17 Supreme Court Cases 301, it has been held by the Hon'ble Apex Court that -

"16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if

the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC.....However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide."

8. In the peculiar facts and circumstances of the case, the continuous torture and harassment caused to the deceased by the present applicant and other family members, may be taken as an abetment to the deceased to commit suicide.

9. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, materials collected during the course of investigation and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant.

10. The anticipatory bail application is, hereby, **rejected**

Order Date :- 3.11.2023

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