

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12138 of 2023

Applicant :- Smt.Sheela Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Prabhat Kumar Tiwari

Counsel for Opposite Party :- G.A.,Sohan Lal Yadav

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Prabhat Kumar Tiwari, learned counsel for the applicant, learned Additional Government Advocate for the State and Mr. Sohan Lal Yadav, learned counsel for the informant.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.88 of 2022, under Sections 498-A, 306 IPC and 3/4 Dowry Prohibition Act, Police Station Rakabganj, District Agra.

3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. She has never committed any offence as alleged in the impugned FIR. The applicant is a widow lady aged about 60 years and is suffering from several old age ailments. She is mother-in-law of the deceased. After incident, she herself admitted the deceased to the hospital and during treatment after two months she was died. As per allegation, the main role has been assigned to the husband of the deceased. He further submits that the incident is alleged to have taken place between 22.02.2011 to 22.12.2021 whereas the impugned FIR has been lodged on 19.06.2022 through an application under Section 156 (3) Cr.P.C. which was filed on 02.02.2022. He further submits that as per postmortem report, the cause of death has been shown as septicemic shock as a result of multiple organ rejection. He further submits that earlier the applicant has approached before this Court by filing Criminal Misc. Anticipatory Bail Application No.9425 of 2022 and a co-ordinate Bench of this Court granted anticipatory bail to the applicant till filing of police report under Section 173 (2) Cr.P.C. vide order dated 27.09.2022, copy whereof has been annexed as Annexure No.18 to the affidavit. He further submits that now the charge sheet has been submitted and the court below has taken cognizance in a routine manner. He further submits that during

investigation, the applicant has fully cooperated in the investigation and has not misused the liberty of bail, therefore, there is no need of custodial interrogation of the applicant, hence, the applicant may be enlarged on anticipatory bail till conclusion of trial. The applicant is having no criminal antecedent.

4. Learned A.G.A. as well as learned counsel for the applicant have opposed the prayer for anticipatory bail of the applicant and have fairly submitted that no offence under Section 306 IPC is made out against 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-**Smt. Sheela 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 :- 16.11.2023

Ajeet