

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12170 of 2023**

Applicant :- Mulla Yusuf @ Adil Husain

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

Counsel for Applicant :- Mukesh Joshi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.
2. This application for anticipatory bail has been filed by applicant- **Mulla Yusuf @ Adil Husain** in connection with Case Crime No. 130 of 2019 under sections 147, 148, 149, 307 IPC, P.S. Nagphani, District- Moradabad.
3. FIR of the present case was lodged against applicant and his brother in law and according to the FIR, marriage of the sister of the informant was performed with the applicant on 20.5.2022 and after marriage, applicant and his brother in law tortured her for Rs. Two lacs and on 21.11.2022, informant received an information that applicant and his brother in law committed the murder of his sister.
4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Charge sheet in the matter has been submitted. submitted that applicant is the husband of the deceased and on the basis of false allegation of demand of dowry and torture, he has been made accused in the present matter. It is further submitted that actually, marriage of the deceased was performed with the applicant about five months before and it was her second marriage and she remained under depression and only due to this reason, she committed suicide. It is further submitted that autopsy report of the deceased shows that she died due to hanging and her hyoid bone was found intact. It is further submitted that immediately after incident, applicant informed the informant and he arrived at the spot and in his presence, inquest was conducted and he was also one of the inquest witness which was conducted on 21.11.2022 but FIR of the present case was lodged on 24.11.2022 i.e. after three days

and this fact clearly suggests that after three days, after due consultation on the basis of false allegation of demand of dowry and torture, applicant and his brother in law have been made accused in the present matter. It is further submitted that applicant is a poor labourer and at the time of incident, he was not present at home and he was not having any such status to demand Rs. two lacs. It is further submitted that from the bare perusal of the FIR it is explicitly clear that it was not a case of Section 307 I.P.C. and no assault was made by firing with intention to kill the informant. In case applicant is granted anticipatory bail, he will 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.

6. It reveals from the perusal of the record that charge sheet in this matter has been submitted in the year 2019 and the applicant has not been declared as proclaimed offender and no process under Section 82/83 Cr.P.C. has been issued against the applicant. During investigation the applicant has been granted anticipatory bail till filing of police report under Section 173 (2) Cr.P.C. which has not been misused.

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 law on the subject finally by holding that 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 applicant 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 applicant till conclusion of trial in the matter.

11. The anticipatory bail application is **allowed** accordingly.

12. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail on his 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 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 him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
- ii. The applicant shall not pressurize/ intimidate the prosecution witness.
- iii. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- iv. The applicant shall not leave India without prior permission of the Court and if he has passport, the same shall be deposited by her 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 applicant in accordance with law.

Order Date :- 23.11.2023

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