

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12628 of 2023

Applicant :- Shweta Kumari Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Mishra, Nagendra
Kumar Singh

Counsel for Opposite Party :- G.A., Mohammad
Alam, Parvez Ahmad Khan

Hon'ble Shekhar Kumar Yadav, J.

1. Heard learned counsel for the applicant and learned Additional Government Advocate for the State. Learned counsel for the informant is also present.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No. 159 of 2019, under section 409 IPC, P.S. Dildarnagar, District Ghazipur, during the pendency of trial.

3. As per contents of the FIR, informant lodged an FIR on 19.09.2019 to the effect that he used to deposit money through agents at the post office every month and he used to give fixed amount of money to agent Loknath and his son/co accused and further it is alleged that other persons also also invested through agents and later on agent/co accused Loknath embezzled all the money of the informant and others.

4. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case. Learned counsel for the applicant submits that she has been falsely implicated by the police as she was having no transaction with the informant. The applicant has no criminal history.

5. It is further submitted that in the FIR, father, mother, and the applicant, who is daughter, have been implicated in the present case. It is further submitted that applicant and her brother challenged the legality and validity of the FIR by filing Criminal Misc Writ Petition No. 2492 of 2020 and 6127 of 2020 in which interim protection has been granted to them

till submission of charge sheet. Now the charge sheet has been filed and there is no need of custodial interrogation. The applicant is having definite apprehension that she may be arrested by the police any time. It is further submitted that the applicant has never collected the amount from any person including the first informant. She has no concern regarding the alleged incident. It is further submitted that she is residing in her laws house situated at Ballia being daughter of co accused Loknath Gupta. There is no criminal history of the applicant. It is further submitted that applicant is lady. He has also drawn attention of the court towards the statement of witness, namely, Jokhan Singh, in which he has not levelled any allegation against the applicant.

6. Learned AGA has opposed the prayer for bail, but could not dispute the said facts.

7. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, he 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.

8. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant Shweta Kumari Gupta involved in the aforesaid crime be released on anticipatory bail 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:-

(1) 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; and

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

(3) The applicant shall surrender his passport, if any, to the concerned Court forthwith. His passport will remain in custody of the concerned Court.

(4) The applicant shall file an undertaking to the effect that he 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.

(5) 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.***

(6) 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 his bail and proceed against him 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 applicant.

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

Order Date :- 28.11.2023

RavindraKSingh