

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12390 of 2023

Applicant :- Farhana

Opposite Party :- State of U.P.

Counsel for Applicant :- Vinod Kumar Tirpathi, Manoj Kumar
Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State perused the record.
2. Apprehending her arrest in Case Crime No.112 of 2023, under Sections 307, 323, 504 IPC, Police Station Nangal, District Bijor, the applicant - Farhana has filed this anticipatory bail application seeking anticipatory bail in the aforesaid crime number.
3. The victim / injured of this case was subjected to cruelty and harassment by her in-laws and she was bitterly beaten by them on several occasions, who sustained injuries. The present applicant was also involved in the commission of the crime, who happens to be the unmarried sister-in-law of the victim. F.I.R. was lodged on 31.7.2023 and investigation started, which is going on.
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. Investigation is going on into the matter. It is further submitted that the applicant is the unmarried sister-in-law of the victim. She lives separately from the victim and her husband. It is further submitted that the applicant has no concern with any demand of dowry or cruelty or harassment caused to the victim. During investigation, some of the co-accused persons, who were specifically named in the F.I.R., have been exonerated. It is further submitted that although injuries have been found over the body of the injured victim, but the present applicant has no concern with the same and it was not natural and probable for an unmarried sister-in-law to harass or cause cruelty to the victim of this case. It is further submitted that the injuries

sustained by the injured / victim are simple in nature. It is further submitted that the applicant has no criminal history. It is further submitted that the applicant is cooperating with the investigation of the case so far. No custodial interrogation is required in the matter. In case the applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been vehemently argued that several injuries have been found over the body of the injured / victim of this case. In the statements of the injured / victim recorded u/s 161 & 164 Cr.P.C., she has assigned the role of assault to the present applicant also, but however he has conceded that the applicant has been cooperative during investigation so far.

6. Present matter relates to matrimonial dispute and the present applicant is the unmarried sister-in-law of the victim of this case.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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.

8. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

9. 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 the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

10. The anticipatory bail application is **allowed**.

11. In the event of arrest of the applicant in the aforesaid case crime, she shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court on her furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make herself available for interrogation by a police officer as and when required.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if she has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

12. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 22.11.2023

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