

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 12349 of 2023

Applicant :- Guddu @ Asfaq

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

Counsel for Applicant :- Sangam Singh,Rajneesh Kumar

Counsel for Opposite Party :- G.A.,Rahul Mishra

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicant, learned Additional Government Advocate for the State and Mr. Rahul Mishra, learned counsel for the complainant.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Complaint Case No.1306 of 2022, under Sections 498-A, 354, 323, 504, 506 IPC and 3/4 D.P. Act, Police Station Hathras Junction, District Hathras.

3. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case just to harass the applicant. The complainant is a married lady. The applicant is the brother-in-law (devar) of the complainant aged about 15 years. The complainant has filed an application under Section 156 (3) Cr.P.C. for lodging the FIR, which has been treated as complaint case and on the basis of statement of complainant and witness recorded under Section 200 and 202 Cr.P.C., the applicant has been summoned. As per complaint, the incident is alleged to have taken place on 25.07.2022 but the complaint itself has been filed on 22.08.2022 i.e. after a lapse of one month. He further submits that earlier a complaint was filed against the brother-in-law (devar) of the opposite party no.2 in which the applicant was a witness and due to this reason, the applicant has been implicated just to pressurize the applicant to withdraw the case. He further submits that the applicant is having no previous criminal history.

4. Learned A.G.A. as well as learned counsel for the complainant have opposed the prayer for anticipatory bail of the applicant.

5. 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.

6. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant-**Guddu @ Asfaq**, involved in the aforesaid complaint case 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 him 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 his passport, if any, to the concerned Court forthwith. His passport will remain in custody of the concerned Court.

(iv) 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.

(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 his bail and proceed against him 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 :- 21.11.2023/Ajeet