

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12323 of 2023

Applicant :- Naushad Ahmad Urf Dr. Naushad Ahmad Urf Munna Ansari

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

Counsel for Applicant :- Pradeep Kumar Bhatt, Mujtaba Shamim Akhtar

Counsel for Opposite Party :- G.A., Zeeshan Mazhar

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant **Naushad Ahmad Urf Dr. Naushad Ahmad Urf Munna Ansari** seeking anticipatory bail in Case Crime No. 0198 of 2023, under Sections 304/304A IPC, Police Station Bhadohi, District Bhadohi.
3. The present applicant having no valid degree as a Surgeon for performing cesarean operation of deceased Meenu, the daughter of the informant which was resulted into death of the daughter of the informant. F.I.R. was lodged on 26.08.2023 under Section 304A I.P.C. and investigation started. However, during investigation, the matter was converted into Section 304 I.P.C.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It has been submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.
5. It is further submitted that the accused applicant has no concern with the Bhadohi Hospital and Trauma Centre, Bhadohi. It is next submitted that he is only a Manager in the aforesaid hospital and no surgery was performed by the present applicant and allegation in this respect in the F.I.R. is totally false and frivolous. It is further submitted that Dr. Himanshu Rai and Dr. Yadav, who

worked in the aforesaid hospital, performed surgical operation of the deceased and unfortunately, deceased died. It is further submitted that earlier Criminal Misc. Writ Petition No. 15599 of 2023 was moved by the present applicant by the coordinate Bench of this Court but the same was dismissed as withdrawn vide order dated 11.10.2023. It is further submitted that the applicant has been cooperative during the course of investigation and the statement of the witnesses of this case have been recorded by the I.O. of the case. It is also submitted that it is found that surgical operation was not performed by the present applicant and as such, he is entitled for anticipatory bail.

6. Per contra, learned A.G.A. as well as learned counsel for the informant have vehemently opposed the prayer for anticipatory bail and it has been submitted that during the course of investigation, the I.O. has collected the evidence that the surgical operation was performed by the present applicant. It is further submitted that it is not a case of medical negligence but a case of culpable homicide not amounting to murder and that is why, the matter was converted to Section 304 I.P.C. from Section 304-A I.P.C. during investigation. It is further submitted that in the post mortem report of the deceased, some injuries have also been found over her body and witnesses of the case have also affirmed this condition that the deceased was admitted in the aforesaid hospital and she was bitterly shouting on account of unbearable pain and bleeding and since the applicant was not a surgeon and he was also in drunken condition, he could not control the situation and deceased died.

7. The present case relates to culpable homicide not amounting to murder. The active participation of the present applicant in the commission of the offence has been found during the course of investigation, therefore, this Court is not inclined to grant anticipatory bail.

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

9. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

10. The application is **rejected**.

Order Date :- 8.11.2023

Shivangi