

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12814 of 2023

Applicant :- Mithlesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Sadrul Islam Jafri, Ambreen Masroor, Sr.
Advocate

Counsel for Opposite Party :- G.A., Arvind Agrawal

Hon'ble Nalin Kumar Srivastava, J.

1. Heard Sri N.I. Jafri, learned senior advocate assisted by Ms. Ambreen Masroor and Sri S.I. Jafri, learned counsel for the applicant, Sri Arvind Agrawal, learned counsel for the informant, learned A.G.A for the State and perused the record.
2. This bail application has been filed by the applicant - **Mithlesh** involved in case crime no.112 of 2023 under Sections 306, 323 IPC, Police Station Linepar, District Firozabad.
3. Co-accused Suryakant had some extra-marital affairs with some lady and when it was protested by his wife, the deceased and her family members, her in-laws including the present applicant made an assault upon her and instigated her to commit suicide by way of consuming poison and subsequently she committed suicide. F.I.R. was lodged on 24.4.2023 and investigation started, which is going on.
4. It is submitted by learned counsel for the applicant that the applicant is innocent and she has apprehension of her arrest by the police at time in the above-mentioned case, whereas there is no credible evidence against her. Allegations levelled against the applicant are false. The investigation of the case is going-on. It is further submitted that substantially there are two main contentions on behalf of the applicant. Firstly, the prosecution has relied upon the statement of Yash, the tender age son of the deceased aged about 8 years and secondly, the allegation of extra-marital affair of co-accused Suryakant, the husband of the deceased. In this context it is submitted that Yash, the son of the deceased, has been tutored and his statement given to the I.O. under section 161 Cr.P.C. is not sufficient to bring this matter within the purview of section 306 IPC. He has stated that his father, grandfather, grandmother and

buva used to provoke his mother to consume poison and they also used to beat her and when one night they made a quarrel with his mother, she committed suicide by consuming some poison in the glass. She was taken to the hospital, but after some time brought back to the home. It is also submitted that even if co-accused Suryakant had some extra-marital affairs, it was not sufficient to hold him responsible for the suicide committed by his wife. In support of his contention, reliance has been placed on the decision of the Hon'ble Supreme Court in **Sanju @ Sanjay Singh Sengar Vs. State of M.P., 2002 3 SCR 668** wherein in almost similar circumstances the Hon'ble Supreme Court had quashed the charge-sheet for an offence under section 306 IPC. It is also submitted that the present applicant along with co-accused Suryakant had preferred Crl. Misc. Writ Petition No.8308 of 2023, which was dismissed with a liberty to the petitioners to apply for anticipatory bail before the competent court according to law vide order dated 5.7.2023. It is also submitted that the regular bail application moved by co-accused Pop Singh, the father-in-law of the deceased, was rejected by this Court in Crl. Misc. Bail Application No.23628 of 2023 vide order dated 31.5.2023. It is also submitted that the present applicant, who is the mother-in-law of the deceased, was not present at the place of occurrence at the time of incident, as she was at her parents' place. It is also submitted that the story of the F.I.R. that the deceased was assaulted by her in-laws before her death is also false because the postmortem report does not corroborate the same and no antemortem injury has been found over the body of the deceased. It is also submitted that the applicant has no criminal antecedents to her credit and in case she is granted anticipatory bail, she will not misuse the liberty and will cooperate with the investigation.

5. Per contra, learned A.G.A. as well as learned counsel for the informant vehemently opposed the prayer for anticipatory bail and submitted that the contents of the F.I.R. are sufficient to show that there was an instigation on part of all the accused persons including the present applicant. It is further submitted that ample evidence has been collected in respect of factum of extra-marital affairs of co-accused Suryakant, the husband of the deceased, which was a continuous torture to the poor wife. It is also submitted that the statement of Yash, the tender age son of the deceased, cannot be washed off at all alleging him to be a tutored witness of the incident because he has narrated the true story before the I.O. and when the deceased was provoked and instigated by her in-laws to commit suicide, she actually committed suicide by way of consuming poison on the very next

morning. It is also submitted that although she was taken to the hospital by her in-laws, but no treatment was offered there to her and they immediately took her back to home and the cctv footage sufficiently shows that at that time, the present applicant was very well present with the deceased. It is also submitted that in the FSL Report, Organochloro Insecticide poison has been found in the viscera of the deceased.

6. In Ude Singh and Others Versus State of Haryana, (2019) 17 Supreme Court Cases 301, it has been held by the Hon'ble Apex Court that -

"16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC.....However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide."

7. The aforesaid judgment of Ude Singh (supra), in the facts and circumstances of the present case, fully supports the present prosecution case and said judgment can also be considered applicable to the present case. However, the case of Sanju @ Sanjay Singh (supra) referred above by the learned counsel for the applicant does not help the applicant in any way in the peculiar factual scenario of this case.

8. 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.

9. In the peculiar facts and circumstances of the case, the continuous torture and harassment caused to the deceased by her in-laws, including the present applicant, may be taken as an abetment to the deceased to commit suicide. Further, the case of Sanju @ Sanjay Singh Sengar (supra) referred above does not help the applicant in any way as the facts of the aforesaid case differ from the present one.

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, materials collected during the course of investigation and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant.

11. The anticipatory bail application is, hereby, **rejected**.

Order Date :- 6.12.2023

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