

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12435 of 2023

Applicant :- Islam Urf Islamuddin

Opposite Party :- State of U.P.

Counsel for Applicant :- Abdul Majeed, ufa Saba

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Supplementary affidavit has been filed today, is taken on record.
2. Heard Mrs. ufa Saba, learned counsel for the applicant and learned Additional Government Advocate for the State.
3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.145 of 2005 arising out of Case No.1385 of 2006, under Sections 376, 342, 506 IPC, Police Station Nai Mandi, District Muzaffar Nagar.
4. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case just to harass the applicant. The applicant has never committed any offence as alleged in the impugned complaint. The victim has not medically examined nor any medical report is available on record. There is no direct or indirect evidence against the applicant. She further submits that one of the accused, namely, Israeel s/o Meharban, who was brother of the applicant has made several complaints against informant's husband and due to this enmity the husband of informant has lodged against the applicant and 3 other co-accused persons. She further submits that the relationship of complainant and her husband was not good for which complainant has filed a Complaint Case No.920 of 2004 against her husband. She further submits that earlier a report was also filed by husband of the informant that his wife was taken by the accused persons on 29.08.2004 and that report was filed on 04.10.2004 and after investigation charge sheet was submitted against the applicant and three others, which has been challenged by the co-accused by filing 482 petition being Criminal Misc Application No.12295 of 2005 in which this court vide order dated 07.09.2005 stayed the further proceedings of the criminal case. She further submits that the said 482 Cr.P.C. petition has been dismissed on 17.07.2023 and the stay order was vacated in the light of judgment of Hon'ble Apex Court in the case of Asian Resurfacing of Road Agency Pvt.

Ltd. vs. CBI and issued warrant as well as NBW against the accused persons. In the meantime, complainant and her husband passes away as per Pariwar Register. He further submits that co-accused Warisha has also approached this Court by filing Criminal Misc. Anticipatory Bail Application No.11271 of 2023 and this Court has granted anticipatory bail vide order dated 31.10.2023. The applicant is having no previous criminal history as has been mentioned in paragraph 26 of the affidavit. He further submits that applicant has apprehension of imminent arrest and in case, the applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. has vehemently opposed the prayer for anticipatory bail of the applicant but could not dispute the aforesaid contentions raised by learned counsel for the applicant.

6. 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.

7. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant-**Islam Urf Islamuddin**, involved in the aforesaid case crime 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 co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation.

(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 from disclosing such facts to the Court or to any police officer.

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

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

(v) 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.

(vi) 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.***

(vii) 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.

8. 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.

9. With the aforesaid observations/ directions, the application stands disposed of. Trial court is further directed to make every endeavor to conclude the trial of Case No.1385 of 2006 (State Vs Islamu and others), arising out of Case crime No.146 of 2005, under Sections 376, 342, 506 IPC, P.S. Nai Mandi, District Muzaffar Nagar, pending before ACJM-I, Muzaffar Nagar within a period of six months without granting unnecessary adjournments to either side in accordance with law.

Order Date :- 22.11.2023

Ajeet