

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12749 of 2023

Applicant :- Smt. Malti @ Mamta And Another

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

Counsel for Applicant :- Ruchita Jain

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. Heard Ms. Ruchita Jain, learned counsel for the applicants as well as Sri Sunil Kumar, learned A.G.A. for the State and also perused the material available on record.

2. The present anticipatory bail application has been filed on behalf of the applicants in Complaint Case No. 88 of 2019, arising out of Case Crime No. 203 of 2017, under Sections 395, 387, 323 IPC, Police Station Samthar, District Jhansi, with a prayer to enlarge them on anticipatory bail.

3. As per prosecution story, the applicant and co-accused persons are stated to have demanded a ransom from the informant and are stated to have robbed Rs. 5,000/- from him on 9.11.2015 at about 10.00 am.

4. Learned counsel for the applicants has stated that the applicants being ladies, are maliciously being prosecuted in the present case due to ulterior motive and have the apprehension of their arrest. The applicants have nothing to do with the said offence as alleged by the prosecution. Learned counsel has next stated that the institution of the FIR is hit by Section 300 Cr.P.C., as the applicant has been put to double jeopardy. Initially, an NCR No. 63 of 2015 was instituted by the same informant regarding the same incident on 9.11.2015. Subsequent to it, the investigation was taken in it by invoking the powers u/s 155(2) Cr.P.C. and the police was pleased to file a closure report in it, as such, the instant FIR has been instituted by the informant on 12.7.2017, which is delayed by more than one and a half years.

5. Learned counsel has further stated that even after the investigation, the closure report was filed by the investigating officer in the present case, but on the protest petition filed by the informant and treating it as a complaint case, the applicant and co-accused persons have been summoned vide order dated

31.1.2020 passed by Special Judge (Dacoity Affected Area)/Additional Sessions Judge, Court No. 2, Jhansi. It is next stated that the applicant no. 2 Smt. Mamta had filed a petition u/s 482 Cr.P.C. No. 12763 of 2020, which is still pending and there is no interim protection in light of the judgement of the Apex Court passed in *Asian Resurfacing of Road Agency Pvt. and Another vs. Central Bureau of Investigation* reported in 2018 (16) SCC 299.

6. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegations made against them. The circumstances which, as per counsel, led to the false implication of the applicants have also been touched upon at length. It is further submitted that the applicants have no criminal antecedents. In case, the anticipatory bail application of the applicants is allowed, they will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned A.G.A. has vehemently opposed the prayer for grant of anticipatory bail but unable to dispute the submissions raised by the learned counsel for the applicants.

8. On due consideration to the arguments advanced by the learned counsel for the parties and in view of the law laid down by the Apex Court in the case of "Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98", the applicants are entitled to be granted anticipatory bail in this case.

9. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicants is allowed.

10. In the event of arrest of the applicants, *Smt. Malti @ Mamta and Smt. Mamta* involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

- i. that the applicants shall make themselves available for interrogation by a police officer as and when required;
- ii. that the applicants 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 or tamper with the evidence;
- iii. that the applicants shall not leave India without previous permission of the court;
- iv. that the applicants shall not tamper with the evidence during the trial;
- v. that the applicants shall not pressurize/ intimidate the prosecution witness;

vi. that the applicants shall appear before the trial court on each date fixed unless personal presence are exempted;

11. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicants.

12. It is made clear that observations made in granting anticipatory bail to the applicants shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 22.11.2023

Shalini