

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12938 of 2023

Applicant :- Dr. Ashok Kumar Handa

Opposite Party :- State of U.P.

Counsel for Applicant :- Ankit Agarwal

Counsel for Opposite Party :- G.A., Shyam Murari Upadhyay

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Ankit Agarwal, learned counsel for the applicant, Sri Shyam Murari Upadhyay, learned counsel for the informant and Sri R.P. Patel, learned A.G.A. for the State as well as perused the record.
3. The inquest report has been provided by the learned A.G.A. and the same has been perused by this Court.
4. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.1284 of 2018, registered under Section 306 IPC at Police Station- Kotwali Shamli, District Shamli with a prayer to enlarge him on anticipatory bail.
5. As per prosecution story, the applicant is stated to be in illicit relationship with the co-accused person Suman, who was the wife of the deceased person, thereby the applicant and other co-accused persons are stated to have committed the murder of the deceased person on 16.11.2018 at about 6:00 p.m.
6. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. The FIR is delayed by one day and there is no explanation of the said delay caused. Learned counsel has further stated that the inquest proceeding of the deceased person were taken up 17.11.2018 at 5:30 p.m. and were completed at 6:15 p.m. The said inquest report does not indicate any visible injury on the body of the deceased person except on the neck. The informant herein, Sitaram, is the panch witness no.1 in the inquest proceedings and he has not whispered a single word regarding the homicidal death of the deceased person. The case is clear cut of suicide.
7. Learned counsel for the applicant has further stated that the

police after thorough investigation was please to file final report aka charge-sheet against Suman only, who happens to be the wife of the deceased person. The matter was of family discord and the applicant has been wrongly entangled in it. Even the name of the applicant has although been mentioned in the body of the FIR does not finds mention in the array of accused persons in the FIR. Learned counsel has further stated that after the closure report, the informant had filed a petition under Section 482 No.11460 of 2021 and this Court was pleased to pass an order that the informant was free to approach the Magistrate concerned by invoking the powers under Section 156(3) Cr.P.C. for redressal of his grievance. Subsequent to it, the informant filed an application under Section 156(3) Cr.P.C. and another FIR No.124 of 2022 was instituted against the applicant and other co-accused persons regarding the same incident.

8. Learned counsel for the applicant has further stated that the present FIR and FIR No.124 of 2022 are hit by Section 300 Cr.P.C. and are against all cannons of law. The principle of *res judicata* applies herein and the applicant has been subjected to double jeopardy. Learned counsel has further stated that after thorough investigation in the said FIR No.124 of 2022, the police was pleased to file a closure report in the said case also. The proper course would have been that the informant could have filed a protest petition before the Magistrate concerned and the matter would have been sent for further investigation, if needed it there. The said procedure has not been followed rather this illegal process of filing of two FIRs of one and the same incident has been followed.

9. Learned counsel for the applicant has further stated that during trial, seven witnesses have been examined and witnesses of fact have stated that the applicant was having illicit relationship with the wife of the deceased person, as such the deceased has committed suicide, the applicant and other co-accused persons have caused his murder alongwith co-accused person Suman. Learned counsel has placed reliance on the statements of two siblings of the deceased and the co-accused person Suman, namely, Km. Anchal and Yash Gautam who have categorically stated that on the date of incident, their father was found hanging in his house and the door was locked from inside, as such there is no possibility of any homicidal death of the deceased.

10. Learned counsel for the applicant has also placed reliance on Section 174 Cr.P.C., which categorically indicates that the purpose of inquest proceedings is to ascertain as to the cause of death whether it is suicidal, homicidal or accidental and nothing

more than that and the same indicates that no visible injury was found on the body of the deceased person. Learned counsel has further stated that the applicant has been made an accused on the basis of fake allegations of having illicit relationship with the wife of the deceased person. It is alleged in an application referred to the Inspector General of Police, Meerut that it was the applicant who was paid Rs.1 lakh by the deceased person for getting his wife a job as A.N.M. in health department and subsequently the deceased established illicit relationship with the applicant and one another doctor.

11. Learned counsel for the applicant has further stated that the said allegations are false and vague. There is nothing substantial in the said allegations. The applicant has been summoned by invoking the powers under Section 319 Cr.P.C. by the learned Court concerned, although in certain parts it is self contradictory. The applicant is a retired government medical practitioner and has nothing to do with the said offence.

12. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. The applicant has no previous criminal history except one case under Section 323 I.P.C. instituted subsequent to the present case. The applicant has apprehension of his arrest. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

13. Learned counsel for the applicant has stated that the said criminal history of the applicant stands explained. In support of his submission, learned counsel has placed much reliance upon the judgment of **Prabhakar Tewari vs. State of U.P. And Another, 2020 (11) SCC 648**, wherein the Apex Court has observed that pendency of several criminal cases against an accused itself cannot be a basis for refusal of bail, if otherwise his case for bail is made out.

14. Per contra, learned counsel for the informant and learned A.G.A. have vehemently opposed the anticipatory bail application and have stated that it was the applicant who established illicit relationship and had caused the murder of the deceased person.

15. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the

applicant, taking into consideration the fact that no ingredients of Section 306/109 I.P.C. are fulfilled in the said case coupled with the fact that the Investigating Officer had proceeded for conducting the inquest proceedings to the place of occurrence well before the institution of the FIR on the information of co-accused person Suman, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "***Sushila Aggarwal Vs. State (NCT of Delhi), (2020) 5 SCC 1***". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

16. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Dr. Ashok Kumar Handa** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii). that 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 or tamper with the evidence;
- (iii). that the applicant shall not leave India without the previous permission of the court;
- (iv). that in case charge-sheet is submitted the applicant shall not tamper with the evidence during the trial;
- (v). that the applicant shall not pressurize/ intimidate the prosecution witness;
- (vi). that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
- (vii). that in case of breach of any of the above conditions the court concerned shall have the liberty to cancel the bail.

17. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 24.11.2023
Ravi Kant

(Krishan Pahal, J.)