

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13141 of 2023

Applicant :- Kumari @ Shama Parveen

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Mohammad Farooque Ansari

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Sri Mohammad Farooque Ansari, learned counsel for the applicant and learned Additional Government Advocate for the State.
2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Session Trial No. 176A of 2015 (Kumari Shama Parveen @ Channo Vs. State of U.P.) arising out of Case Crime No.332 of 2015, under Sections 363, 366, 376, 342, 120-B I.P.C. & Section 5/6 Protection of Children from Sexual Offence Act, 2012, P.S.- Atrauli, District- Aligarh.
3. As per prosecution story, the opposite party no.3 lodged an FIR on 1.7.2015 regarding incident dated 23.6.2015 against the applicant and five other for rape by Chhote Miyan with the co-operation of entire family.
4. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case just to harass the applicant. He submitted that after submission of charge sheet, the applicant approached before this Court for quashing of the charge sheet in application under Section 482 Cr.P.C. No.16585 of 2017 and this Court stayed the proceedings of the case vide order dated 24.5.2017 and vide order dated 23.5.2019 the said application was dismissed for non prosecution and the interim protection stands vacated. Thereafter, the applicant moved anticipatory bail applicant before the court below and the same was rejected by court below vide its order dated 20.10.2023, hence the present anticipatory bail application. He further submitted that at the time of incident the application was juvenile, aged about 14 years, 9 days and in this regard he has moved an

application for declaring him juvenile, which is still pending. He submitted that the trial was started and during trial her case was separated from the other accused persons. He submitted that during trial, five persons were acquitted. Learned counsel for the applicant drawn attention of this Court towards the statement of P.W.2 where there is no allegation against the applicant as alleged in the FIR. He further submitted that no offence is made out against the applicant as alleged in the FIR. The applicant is having no previous criminal history as has been mentioned in paragraph 18 of the affidavit. Learned counsel for the applicant further submits that applicant has apprehension of imminent arrest and in case, applicant is released on anticipatory bail, she will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. has opposed the prayer for anticipatory bail of the applicant. He has submitted that in view of the seriousness of the allegations made against the applicant, she is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, she 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- **Kumari @ Shama Parveen**, involved in the aforesaid case crime be released on anticipatory bail 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 trial.

(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 her 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 she 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. The trial court is directed to conclude the trial, expeditiously, in accordance with law, within a period of six months from today.

10. With the aforesaid observations/ directions, the application stands **allowed**.

Order Date :- 5.12.2023 // Krishna*