

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13106 of 2023

Applicant :- Prempal Singh And Another

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

Counsel for Applicant :- Rahul Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicants - **Prempal Singh** and **Smt. Poonam** seeking anticipatory bail in Case Crime No. 7 of 2021, under Sections 498-A, 420, 467, 468 IPC and 3/4 Dowry Prohibition Act, Police Station Mahila Thana, District Hathras.

2. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

3. It is submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. It is also submitted that no false information was given by the present applicants to the informant as per the contents of the F.I.R. and even during course of investigation no evidence of playing fraud has been collected by the I.O. against the present applicants. Present applicants are the original parents of the co-accused Subhash and they have actually played no role in commission of the crime. After completion of investigation, charge sheet has been submitted in the matter. It is also submitted that during investigation the present applicants were granted interim anticipatory bail by this Court on 29.7.2021 vide Criminal Misc. Anticipatory Bail Application No. 13184 of 2021 and the said liberty was never misused by the applicants but however, vide order dated 25.1.2023 the said anticipatory bail application was rejected due to non-prosecution. It is also submitted that the co-accused Arjun Singh and Kalawati have also been granted anticipatory bail by this Court on 13.7.2022 vide Criminal Misc. Anticipatory Bail Application No. 6137 of 2022. No process under Sections 82 and 83 CrPC has been issued against the applicants and the applicants have not been declared absconder. In

case applicants are granted anticipatory bail, they will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. In this matter, from the perusal of the record it appears that the present applicants are the original parents of Subhash, the co-accused / husband of the victim and he was adopted by Arjun Singh but by concealing this fact the marriage of the victim was performed with co-accused Subhash on the pretext that the said Subhash is the real son of co-accused Arjun Singh and since the said Arjun Singh has no issue, the co-accused Subhash shall inherit the whole property of Arjun Singh and some documents were also shown to the informant in this regard but however after the marriage the co-accused Subhash left her wife, the victim, in the house of the co-accused Arjun Singh and he started to live with his original parents, who are the applicants. Subsequently the daughter of the informant was ousted from the house and the present applicants and co-accused Subhash, Sandesh and Gita are not permitting the victim to enter into the house. F.I.R. was lodged on 22.2.2021 for the offence under Section 498-A IPC and after investigation now charge sheet has been submitted under Sections 498-A, 420, 467, 468 IPC and 3/4 Dowry Prohibition Act. It also reveals that the applicants have been cooperative during investigation and after submission of charge sheet no custodial interrogation is required.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court 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.

8. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170 CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173 CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87 CrPC that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

12. Insofar as the present case is concerned and the general principles under Section 170 CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

9. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicants till the end of trial.

10. The application is **allowed** accordingly.

11. In the event of arrest of the applicants, they shall be released on anticipatory bail on their furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

(i) The applicants shall make themselves available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

12. In case of default of any of the conditions, the same may be a ground for cancellation of protection granted to the applicants.

Order Date :- 29.11.2023

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