

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13529 of 2023**

Applicant :- Vinod Prajapati

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Ashok Gupta, Akash Kishan

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicant- **Vinod Prajapati** in connection with Case Crime No.183 of 2023, under Section 306 IPC, Police Station - Kotwali Nagar, District - Banda.

3. The prosecution story as culled out in the F.I.R. is that the daughter of the informant got married to the present accused applicant and a girl child was born from their wedlock. Subsequently, she was subjected to cruelty and harassment for the demand of additional dowry by her in-laws and she was ousted from her matrimonial home and she was living with her parents. Despite that her in-laws continued to harass her and due to that, she committed suicide by administering some poisonous substance and died on 22.12.2022. F.I.R. was lodged on 23.02.2023 and now the charge sheet has been submitted against the applicant without obtaining the FSL report.

4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Charge sheet in the matter has been submitted. It is further submitted by learned counsel for the accused applicant that the applicant is the husband of the deceased. It is next submitted that prior to the present F.I.R., an F.I.R. under Section 498-A I.P.C. for cruelty and demand of dowry and an application of domestic violence act as well were moved by the deceased against the present accused applicant and her in-laws. It is further submitted that the suicide has been committed by the deceased in her parental

house and not in the house of the applicant. It is next submitted that in the post mortem report, cause of death has not been ascertained and viscera report has been preserved and the report is still awaited. It is next submitted that no specific date, occasion or time has been mentioned in the F.I.R. as to when she was allegedly harassed by the present accused applicant. It is further submitted that only general role has been assigned to the present accused applicant. It is also submitted that the essential ingredients to bring the matter within the purview of Section 306 I.P.C. are not made out from the perusal of the F.I.R. and also on the basis of that, no evidence has been collected by the I.O. during the course of investigation. It is further submitted earlier on 6.7.2023 the applicant was granted anticipatory bail by this Court till submission of police report under Section 173(2) Cr.P.C., which has not been misused by the applicant and the applicant has been cooperative in the investigation. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Per contra, learned A.G.A. opposed the prayer. However, he could not dispute the factual position that the deceased has committed suicide in her parental house and as a matter of fact, she was living separately with accused applicant since 2019.

6. From the perusal of the record prima facie, the essential ingredients to establish a case under Section 306 IPC appear to be missing. The *mens rea* on the part of the accused has to be established by the prosecution and there must be atleast an indication that there was any intention on the part of the accused to abet the commission of suicide by the deceased and that is why the necessary element of abatement is conspicuously missing from the allegations levelled in the FIR, which undoubtedly an essential ingredient to establish the offence under Section 306 I.P.C.

7. In **Gurcharan Singh v. State of Punjab, (2017) 1 SCC 433** the Hon'ble Apex Court held that the basic ingredients of Section 306 IPC are suicidal death and abetment thereof. To constitute abetment, intention and involvement of accused to aid or instigate commission of suicide is imperative. Any severance or absence of any of these constituents would militate against said indictment. Remoteness of culpable acts or omissions rooted in intention of accused to actualise the suicide would fall short of offence of abetment essential to attract Section 306 IPC. Contiguity, continuity, culpability and complicity of indictable acts or omission are concomitant indices of abetment. Section 306 IPC thus criminalises sustained incitement for suicide

8. Although the charge sheet has been submitted in this matter but 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.

9. 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.

10. 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.

11. 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 170CrPC 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 173CrPC. 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 Cr.P.C 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 170Cr.P.C, 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."

12. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till conclusion of trial in the matter.

13. The anticipatory bail application is **allowed** accordingly.

14. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail on his 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 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.
- ii. The applicant shall not pressurize/ intimidate the prosecution witness.
- iii. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- iv. The applicant shall not leave India without prior permission of the Court and if he has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

15. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicant in accordance with law.

Order Date :- 7.12.2023

Fhd