

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13143 of 2023

Applicant :- Nahid Akhtar

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

Counsel for Applicant :- Ram M. Kaushik, M J Akhtar, Mohd Asif, Shahzad Alam

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Vakalatnama has been filed by Mr Rajeew Upadhaya, Advocate on behalf of opposite party no. 2 today, which is taken on record.
2. Heard learned counsel for the applicant, learned Additional Government Advocate for the State and learned counsel for the opposite party no. 2 and perused the record.
3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No. 13 of 2023, under section 304 IPC, P.S. Saraimeer, District Azamgarh during the pendency of trial.
4. In short, as per version in F.I.R., the informant took her wife to the nursing home of husband of the applicant for the purposes of delivery where during treatment her condition became worse and ultimately she died regarding which present F.I.R. was lodged against the nursing home.
5. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case. It is further submitted that applicant was not named in the F.I.R. but during investigation her name was brought into light as being wife of Dr. Afaq Akhtar who treated the deceased. Further submitted that no any allegation has been made in the F.I.R. against the present applicant even her presence has also not been mentioned. Lastly, it is submitted that the applicant is under apprehension of imminent arrest. In case, the applicant is released on bail, she would not misuse the liberty of bail and would cooperate with the investigation, so requested for anticipatory bail. There is no criminal history of

the applicant. It is further submitted that the material collected during investigation by the Investigating Officer does not disclose that any treatment was given by the applicant upon the deceased.

6. It is further submitted that earlier applicant has been granted anticipatory bail till submission of the charge sheet vide order dated 16.5.2023 and now the charge sheet has been submitted in the matter whereupon cognizance has been taken by the court below and applicant has been summoned vide order dated 4.10.2023. It is further submitted that there is no credible evidence collected against the applicant, therefore, applicant has approached this court for anticipatory bail.

7. Learned AGA as well as learned counsel for the informant has opposed the prayer for bail, It is contended by learned counsel for the informant that this case is in regard to medical negligence and there is report of the medical board constituted by the competent authority pertaining to the alleged negligence of the doctor of the said hospital, therefore, no case for bail is made out.

8. In the light of above, looking to the facts and circumstances of this case, submissions of learned counsel for the parties as mentioned above, taking into consideration the role assigned to the applicant as per prosecution case, gravity and nature of accusation, report of the medical board and the statement of the employee of the hospital, this Court is of the view that no case for exercising its discretionary power under Section 438 Cr.P.C. is made out in favour of applicant.

9. Accordingly, this application under Section 438 Cr.P.C. is **rejected**. Since, applicant is lady, she is directed to move regular bail application before the appropriate forum and if such application is given, the court below shall consider and disposed of the bail application expeditiously in accordance with law.

Order Date :- 12.12.2023
RavindraKSingh