

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 13344 of 2023

Applicant :- Smt. Omkari

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Sri Vijay Pratap Singh, 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 Case Crime No.157 of 2023, under Sections 498-A, 323, 304-B I.P.C. and Section 3/4 of D.P. Act, P.S.- Meerapur, District- Muzaffar Nagar.

3. Brief facts of the case are that marriage of two sisters of complainant namely Sakshi and Shivani was solemnized with sons of the applicant Vipin and Nitin respectively on 7.5.2021 as per Hindu rites and rituals. Sakshi is unable to hear and speak but she is proficient in household work. On 13.4.2023 Shivani wife of Nitin committed suicide at her matrimonial house and husband of applicant immediately informed the police regarding the incident. It is alleged that the applicant and other family members are stated to have subjected her to cruelty for demand of dowry of Rs.10/- lacs and a car and even stated to have caused her death with precincts of their house on 13.4.2023 at about 6:30 p.m.

4. Learned counsel for the applicant submitted that applicant is mother-in-law of the deceased, the applicant is innocent and she has been falsely implicated in the present case. The FIR is delayed by about four months and there is no explanation of the said delay caused. He submitted that the complainant and mother of the deceased have sworn affidavit on 28.4.2023 stating therein that deceased Shivani committed suicide because of mental stress and they do not want to prosecute anyone in this regard, copy of the affidavit

dated 28.4.2023 is annexed as Annexure No.8 to the affidavit. Learned counsel has further submitted that co-accused- Vipin Kumar (Jeth of the deceased), who has already been granted anticipatory bail by co-ordinate Bench of this Court in Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No.12553 of 2023, vide order dated 22.11.2023, copy of the same is annexed as Annexure No.10 to the affidavit. Learned counsel for the applicant further submitted that the investigation is going on and till date no charge sheet has been submitted against the applicant. The applicant has no criminal history. The 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. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application but unable to dispute the submissions raised by the learned counsel for the applicant.

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- **Smt. Omkari** involved in the aforesaid 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 Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation.

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

Order Date :- 4.12.2023
Krishna*