

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 13384 of 2023

Applicant :- Aaftara And 3 Others

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

Counsel for Applicant :- Swetashwa Agarwal, Dinkar Lal

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Vakalatnamas filed by Sri Ajay Kumar Mishra and Sri Shams Uz Zaman, advocates on behalf of the informant / opposite party no.2 are taken on record.
2. Heard learned counsel for the applicants, learned A.G.A. for the State as well as learned counsel for the informant / opposite party no.2 and perused the record.
3. This application has been moved on behalf of the applicants - **Smt. Aaftara, Mohd. Afzal, Mohammad Imran Khan** and **Afsar** seeking anticipatory bail in Case Crime No.147 of 2023, under Sections 364, 323 IPC, Police Station Lalkurti, District Meerut.
4. The named accused persons including the present applicants kidnapped the informant of the case to put pressure upon him for compromise in an earlier case and they also threatened him for life. Anyhow, he rescued. F.I.R. was lodged on 12.10.2023 and investigation started, which is still going on.
5. Learned counsel for the applicants submits that that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. They have been falsely implicated in this matter. Allegations levelled against the applicant are false. Investigation is going on in the matter. It is also submitted that the whole story of the prosecution is totally baseless and not plausible. Due to the animosity of previous litigation, the present applicants have been roped in this matter. It is further submitted that there has been a matrimonial dispute between the informant and his wife and an F.I.R. under Sections 498-A, 504, 377, 323, 313, 376 IPC, Section 3/4 Dowry Prohibition Act and Section 3/4 Muslim Women (Protection of Rights on Marriage) Act has already been lodged. It is also submitted that in the F.I.R. itself there is no allegation regarding any assault made upon the informant of the case by the accused persons, but surprisingly he has been medically examined and the doctor has found five injuries over his body. It is also submitted that nothing adverse has been found in the x-ray report of the so-called injured of this case and all the injuries are simple in nature. The prosecution has absolutely no explanation to this effect. Even in the

statement recorded u/s 161 Cr.P.C. nothing has been stated by the informant / alleged injured that at any point of time during the occurrence he was beaten by the accused persons. It is also submitted that the CCTV footage allegedly collected by the I.O. also does not help the prosecution in any way. It is also submitted that earlier an F.I.R. was lodged by the applicant no.1 Smt. Aaftara against her in-laws for demand of dowry, cruelty and harassment and also with an allegation of rape and unnatural sex on 30.3.2023 and only to create pressure in the aforesaid matter, present F.I.R. has been lodged by Wasif Ali, who happens to be the brother-in-law (devar) of applicant no.1. It is also submitted that in the aforesaid matter, charge-sheet has already been submitted. During investigation, the applicants have been cooperative so far and as such the applicants are entitled for anticipatory bail. In case the applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

6. Per contra, learned A.G.A. as well as learned counsel for the informant / opposite party no.2 opposed the prayer for anticipatory bail and it has been vehemently submitted that non-bailable warrant has been issued against the present accused applicants as they are not cooperative.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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 **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

9. 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 the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

10. The anticipatory bail application is **allowed**.

11. In the event of arrest of the applicants in the aforesaid case crime, they shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court on their furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicants shall make themselves available for interrogation by a police officer as and when required.

(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 Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicants.

Order Date :- 5.12.2023

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