

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 220 of 2023

Applicant :- Smt. Nisha Devi

Opposite Party :- State Of U.P. Thru. Pirn. Secy. Home Lko.

Counsel for Applicant :- Ashok Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Sri Ashok Kumar Singh, the learned counsel for the applicant as well as Sri Rao Narendra Singh, the learned A.G.A.-I for the State are present.

2. On 31.01.2023, after hearing learned counsel for the applicant and learned A.G.A. for the State this court had passed the following order:

"Heard Sri Ashok Kumar Singh, learned counsel for the applicant, learned A.G.A for the State and perused the material available on record.

The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.01 of 2014, under Sections 409, 120-B IPC, Police Station Gomti Nagar, District Lucknow, with a prayer to enlarge her on anticipatory bail.

Learned counsel for the applicant has submitted that the applicant is the supplier of sandstone. Learned counsel for the applicant has further submitted that co-accused persons, Ajai Kumar and Sunil Kumar Tyagi, have already been granted anticipatory bail by Co-ordinate Bench of this Court vide order dated 29.09.2021 passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.9118 of 2021 and co-accused Abdul Hameed Ansari, Ram Aasare and Akhilesh Kumar Singh have also been granted anticipatory bail by Co-ordinate Benches of this Court vide orders dated 25.02.2022, 28.03.2022 and 16.02.2022 passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.305 of 2022, 472 of 2022 and 220 of 2022 respectively. Therefore, the present applicant is also entitled for anticipatory bail. Learned counsel for the applicant undertakes that she will cooperate in the investigation failing which the State can move appropriate application for vacation of the interim protection.

The prayer for anticipatory bail has been vehemently opposed by learned A.G.A. However, the aforesaid factual aspect of the parity to the co-accused has not been disputed by them.

Matter requires consideration.

Learned A.G.A. is granted three weeks' time to file counter affidavit. Rejoinder affidavit, if any, may be filed within a week thereafter.

List and connect this case alongwith Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No.305 of 2022.

On due consideration to the arguments advance by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant, the applicant, as an interim measure, is liable to be enlarged on anticipatory bail on the ground of parity and in view of the Constitution Bench judgment of Supreme Court in the case of "Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

In the event of arrest, the accused-applicant- Smt. Nisha Devi shall be released forthwith in the aforesaid case crime (supra) on interim anticipatory bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the arresting officer/investigating officer/S.H.O. concerned on the following conditions:-

(i) the applicant shall make herself available for interrogation as and when required;

(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; and

(iii) the applicant shall not leave India without the previous permission of the Court. ."

3. The State has filed a counter affidavit but nothing has come to light which may persuade this court to take a view, other than the view taken at the time of granting interim anticipatory bail to the applicant.

4. The applicant has filed a rejoinder affidavit annexing therewith a copy of an order dated 25.07.2022 passed by this court in a bunch of similar application being lodged by criminal Misc. Anticipatory Bail Application No. 10048 of 2021 whereby anticipatory bail of 46 similar situate persons have been allowed.

5. The learned A.G.A. could not point out any violation of the conditions of interim anticipatory bail committed by the applicant

6. In view of above, the interim order dated 31.01.2023 is made absolute and the anticipatory bail application is allowed. In case the applicant has not furnished the bail bonds till date, he will appear before the trial court and furnish bail bonds within a period of two weeks from today.

(Subhash Vidyarthi, J.)

Order Date :- 24.11.2023
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