

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 1406 of 2023

Applicant :- Uma Devi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Dept.
Lko. And Another

Counsel for Applicant :- Amit Kumar Awasthi, Shubham
Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Shubham Shukla, the learned counsel for the applicant as well as Sri Pragya Nand Rai, the learned Additional Government Advocate appearing on behalf of the State and perused the records.

2. The instant application has been filed by the applicant seeking anticipatory bail in F.I.R. bearing Case Crime No. 473 of 2016, under Sections 406 & 409 IPC, P.S. Nighasan, District Kheri.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 19.11.2016 against the applicant and one Prabhu Nath Ram, stating that while the applicant was Village Pradhan and the other co-accused was Village Panchayat Officer, they embezzled Rs. 1,90,800/- meant for being distributed as scholarship amongst the students during the year 2011-12.

4. In the affidavit filed in support of the application it has been contended that the applicant is 53 years old innocent woman having no criminal history and she has been falsely implicated in the present case.

5. Learned counsel for the applicant has submitted that keeping in view the old age and medical condition of the applicant, the benefit of notice under Section 41A Cr.P.C. was given to the applicant. However, the relevant extract of case diary annexed with the affidavit indicates that when the Investigating Officer had gone to record statement of the applicant, his son told that the lady lying on a cot was the applicant, she was aged 60 years, was unwell and was on the verge of dying. The applicant had also told the informant that she was unable to move. The Investigating Officer recorded that keeping in view the age and

ailment of the applicant, it was not proper to take her into custody and, therefore, a notice under Section 41A Cr.P.C. was given to her. However, there is nothing on record to indicate that in furtherance of the notice issued under Section 41A Cr.P.C., the applicant got her statement recorded. When the Investigating Officer had gone to record the statement of the applicant, her age was told to be 60 years in the year 2016 whereas in the anticipatory bail application filed in the year 2023, her age has been disclosed as 53 years. From the aforesaid facts prima facie it appears that the applicant has not cooperated with the investigation and the Investigating Officer was misled about her age. Even thereafter, she did not get her statement recorded.

6. The learned A.G.A. has opposed the prayer for bail but he could not dispute the aforesaid aspects of the matter.

7. Having considered the aforesaid conduct of the applicant and the nature of allegations levelled against her, i.e. embezzlement of money meant for being distributed as students scholarship, I am of the view that the applicant does not deserve to be granted discretion of this court by granting pre-arrest bail to her.

8. The anticipatory bail application is ***rejected*** accordingly. However, in case the applicant files an application for grant of bail, the same shall be considered and decided on its merits, without being influenced by any observations made in this order.

Order Date :- 1.12.2023

Pradeep/-