

Court No. - 33

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 1417 of 2024

Applicant :- Mohammad Wakeel

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

Counsel for Applicant :- Mohd. Amir Khan, Sheelam Devi, Surya
Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Shri Surya Prakash, learned counsel for the applicant, Shri Abhishek Kumar, learned counsel for the first informant, Shri Dinesh Kumar Singh, learned AGA for the State through Video Conferencing and perused the record.

2. The present application under Section 438 Cr.P.C. has been filed by the applicant seeking bail in anticipation of his arrest in Case Crime No.311 of 2024, under Sections-498-A, 323, 506, 316, 354, 376 IPC and 3/4 Dowry Prohibition Act & Section 3/4 Muslim Marriage Act, Police Station-Motiganj, District- Pratapgarh.

3. Contention of learned counsel for the applicant is that there is matrimonial dispute between the brother of the applicant, Raja Bhaiya and his wife, the first informant, Smt. Sheeba. This matrimonial dispute between the couple has been culminated into the proceedings in question. It is further submitted that though in the FIR, apart from the harassment for demand of dowry, allegation of rape was also made against the applicant but in her statement recorded under Section 164 Cr.P.C., the first informant has not made specific date, time and month regarding commission of rape on the part of the applicant.

4. Per contra, learned counsel for the first informant as well as learned AGA for the State have submitted that there is specific allegation for committing rape on the present applicant in the statement of Smt. Sheeba recorded under Section 164 Cr.P.C. Therefore, no case is made out for anticipatory bail.

5. However considering the aforesaid submission and on perusal of FIR, it appears that there was allegation for beating and harassment for dowry demand against the applicant in the FIR as

well as committing rape on the first informant, Smt. Sheeba but in her statement recorded under Section 164 Cr.P.C. absolutely vague allegation was made against the applicant that the applicant, who has committed rape first with the first informant. In the present case, charge sheet yet to be filed. Therefore, this Court is of the view that the applicant is entitled to be released on anticipatory bail till submission of police report.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations, gravity of offence and antecedents of applicant, he is entitled to get anticipatory bail till submission of charge sheet under Section 173 Cr.P.C. as per the Constitution Bench judgment of the Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi) reported in 2020 SCC Online SC 98.**

7. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant, Mohammad Wakeel involved in the aforesaid crime be released on anticipatory bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Investigating Officer 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 him 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 file an undertaking to the effect that he 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.

(v) 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 (supra).

(vi) 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 **disposed of**.

Order Date :- 12.7.2024

RKM