

Court No. - 35

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 1703 of 2024

Applicant :- Raja Bhaiya And Another

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 Mohd. Amir Khan, learned counsel for the applicants, learned A.G.A. for the State and Shri Shikhar Srivastava learned counsel for the informant.

2. The present application under Section 438 Cr.P.C. has been filed by the applicants seeking bail in anticipation of their arrest in Case Crime No. 311 of 2023 under Sections-498-A, 323, 506, 316, 354, 376 I.P.C. and Section 3/4 of Dowry Prohibition Act & Section 3/4 of Muslim Marriage Act, Police Station-Motiganj, District-Gonda.

3. Contention of learned counsel for the applicants is that after petty matrimonial discord the opposite party no. 2 left the home and started residing at her parental house and thereafter the applicant no. 1 who is the husband of opposite party no. 2 had filed application dated 21.10.2023 for restitution of conjugal rights in which notices were also issued on 21.10.2023. After receiving the notice, the impugned F.I.R. was lodged on 13.11.2023. From the perusal of the statement of opposite party no. 2 recorded under Section 164 Cr.P.C., it is clear that general allegations has been made against the entire family regarding demand of dowry. A specific allegation is only against the brother-in-law Sakbir, so far as the appellant no. 2 is concerned who is the brother-in-law of the opposite party no. 2 and no specific allegation has been made against him also. He has further submitted that the applicant has cooperated in the investigation and police has not arrested him. It is lastly submitted that there is no chance of tempering the witnesses or evidence or absconding on the part of the applicants and if they are released on anticipatory bail and they will coordinate in the trial also.

4. Per contra, learned A.G.A. has submitted that the applicant no. 1 is husband, therefore, he cannot be escaped to the liability of demand of dowry even if general allegations are made against the entire family. Therefore, no case is made out for anticipatory bail.

5. However considering the fact that general allegation has been made against the entire family including the present applicants and no specific role was assigned to the present applicants and the F.I.R. in question was lodged after the application of the applicant no. 1 for restitution of conjugal rights was filed on 21.10.2023. It is established law that bail is rule and jail is exception unless offence is such a serious in nature which will affect the society or there are chances of tampering the witness or absconding the accused and in the present case both these ingredients are missing therefore, applicants are entitled to be released on anticipatory bail

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations, gravity of offence and antecedents of applicants, they are entitled to get anticipatory bail during trial.

7. In the event of arrest, the applicants shall be released on anticipatory bail. Let the applicants, **Raja Bhaiya and Mohammad Sarkar** 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 concerned Investigating Officer with the following conditions:-

(i) The applicants 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 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 from disclosing such facts to the Court or to any police officer.

(iii) The applicants shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

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 applicants.

9. With the aforesaid observations/directions, the application

stands **disposed of**.

Order Date :- 18.10.2024
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