

23.11.2022.
Ct. No. 28
PA

C.R.M. (A) 4870 of 2022

In Re:- An application for anticipatory bail under Section 438
of the Code of Criminal Procedure

Naresh Kumar Agarwal and Another
Vs.
The State of West Bengal

Mr. Amit Desai, Sr. Adv.
Mr. Ranjan Bachawat, Sr. Adv.
Mr. Kishore Datta, Sr. Adv.
Mr. Sandipan Ganguly, Sr. Adv.
Mr. Sourav Chatterjee, Adv.
Mr. Niloy Sengupta, Adv.
Mr. Avik Ghatak, Adv.
Mr. Ankit Agarwala, Adv.
Mr. Abhinav Rakshit, Adv.

...for the Petitioners.

Mr. Saswata Gopal Mukherjee, Ld. PP
Mr. Sudip Ghosh, Adv.
Mr. Arijit Ganguly, Adv.
Mr. Sajib Kumar Dan, Adv.

.....for the State.

Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Anuj Singh, Adv.
Mr. Somopriyo Chowdhury, Adv.
Mr. Ajay Agarwal, Adv.
Mr. Arka Banerjee, Adv.

..... for the de-facto complainant

1. Petitioners being the parents-in-law have approached the Court praying for anticipatory bail.

Relevant facts:-

2. Rashika was married to Kushal Agarwal, son of the petitioners. The marriage was a negotiated one and was solemnized on 09.02.2020. After marriage, the couple went for honeymoon to Dubai and Oman. A string of parties to celebrate the marriage followed. But the bonhomie was short lived and on 16.02.2021, Rashika committed suicide by jumping from the third floor of her matrimonial home. On 17.02.2021, her father lodged written complaint with the police resulting in registration of FIR under sections 498A/306/34 of the Indian Penal Code against Kushal Agarwal and others. A week thereafter, an elaborate letter of complaint was submitted alleging demand of dowry and torture upon the housewife by Kushal and other in-laws, that is, the petitioners. On the strength of such complaint, offences under sections 406/304B of the Indian Penal Code were added to the FIR.
3. Pending investigation of the case, a number of litigations were initiated by and between the parties. A criminal case was also lodged against the de-facto complainant, i.e., father of Rashika alleging wrongful removal of valuables from the bank locker of the deceased.

4. A defamation suit was also filed by petitioner No.1 alleging false and scurrilous insinuation against him.
5. The de-facto complainant complained that the investigation was not being conducted in a proper manner. Accordingly, investigation was initially transferred to Detective Department, Women Grievance Cell.
6. In course of investigation, non-bailable warrant of arrest was issued against Kushal Agarwal. His prayer for pre-arrest bail was turned down by a coordinate Bench of this Court. A Special Leave Petition filed before the Apex Court challenging the said order, was withdrawn. Subsequently, he was arrested on 13.07.2022.
7. In the meantime, de-facto complainant had approached this court in WPA 17293 of 2022 praying for transfer of investigation to a specialized agency. By order dated 14.06.2022, a learned Single Judge of this Court constituted a Special Investigation Team ('SIT', for short) under the leadership of an experienced lady police officer and transferred the investigation to the aforesaid 'SIT'.
8. In conclusion of investigation, charge-sheet was filed against the aforesaid Kushal Agarwal and the petitioners.

9. In the charge-sheet petitioners were described as 'not arrested', though it is averred therein in spite of raids at various places they could not be arrested.
10. Upon submission of the charge-sheet, the jurisdictional Magistrate by order dated 11.08.2022 took cognizance of the offences and directed issuance of warrant of arrest against the petitioners. As such, apprehending arrest, petitioners prayed for anticipatory bail before the Session Judge which came to be turned down by order dated 21.09.2022. Hence, the present application.
11. During the pendency of this application, petitioners assailed the order dated 11.08.2022 taking cognizance and issuance of non-bailable warrant against them before the learned Single Judge in CRR 3462 of 2022. By order dated 10.11.2022, such prayer was turned down.

Submissions:-

12. Mr. Desai, senior Counsel for the petitioner submits allegation of ill-treatment is primarily against the husband Kushal Agarwal. Allegation of demand of dowry was absent in the FIR. Petitioners were not even named therein. Allegations against them have been made in the subsequent letter of complaint. Such allegations are an afterthought and out and out false. Gifts and other items were given by father of Rashika out of love

and affection and not through compulsion. In the WhatsApp messages of Rashika produced by both the parties in the course of investigation there is no allegation of torture for or in connection with dowry. Even in the subsequent letter, allegation against the petitioners are that petitioner No.1 did not take any steps against his son who was an alcoholic and drug addict and was ill-treating his wife. Allegations against the petitioner No.2 are even less and woefully vague. Subsequently, in their statements under section 164 Cr.P.C., witnesses alleged physical assault by the in-laws, that is, the petitioners which is clearly an afterthought. Petitioners were available during investigation. They wrote letters to the investigating agency offering assistance to the investigation. It is claimed in the charge-sheet that they evaded arrest but no prayer for issuance of warrant of arrest to apprehend them was made. Such prayer was made only against Kushal. In the charge-sheet they have been described as 'not arrested'. In view of **Satender Kumar Antil vs. Central Bureau of Investigation and Anr.**¹ petitioners are entitled to anticipatory bail.

- 13.** In reply, learned Public Prosecutor opposed the prayer for anticipatory bail. Referring to the records of investigation he submits raids were conducted at various

¹ 2022 (11) SCALE 114

places to arrest the petitioners but they could not be arrested. Warrant of arrest issued against them was upheld by this Court in CRR 3462 of 2022. There are ample materials collected during investigation which show petitioners abetted Kushal in the torture which compelled the housewife to commit suicide.

14. Mr. Bandyopadhyay, senior Counsel for the de-facto complainant submitted that the investigation was partisan and ineffective. The de-facto complainant was compelled to knock the doors of this Court to ensure further investigation. The partisan nature of the investigation would be evident from the fact that the investigating agency did not pray for warrant of arrest against the petitioners and described them as 'not arrested' though they could not be arrested they evaded arrest in spite of repeated raids. Petitioner No.1 is a rich and influential businessman and has used his influence to abort proper investigation. He further submitted non-bailable warrant of arrest issued against the petitioners has been upheld in CRR 3462 of 2022.

15. De-facto complainant was shocked at the unfortunate death of his daughter. Hence, he was unable to disclose all relevant facts in the initial FIR. In the subsequent letter he detailed the demands made by the accused persons to give expensive gifts, throw lavish parties and bear expenses of holidays in various resorts.

Not only did the petitioners make such demands but they kept mum and tacitly supported their son who physically and mentally tortured the victim housewife.

Findings:-

- 16.** At the outset, let us consider the submission of Mr. Desai that the petitioner may be granted anticipatory bail as investigation is complete in view of **Satender Kumar Antil** (supra). We are of the view the ratio of the said decision cannot be interpreted to mean anticipatory bail must be granted in all cases where investigation is complete. Present case involves offences punishable with life imprisonment and as per **Satender Kumar Antil** (supra) the case falls in category B. Such cases are to be dealt with on a case to case basis as would appear from the following observation:-

“63. Coming to category B, these cases will have to be dealt with on a case-to-case basis again keeping in view the general principle of law and the provisions, as discussed by us.”

- 17.** Records of investigation reveal in spite of raids at various places, the petitioners could not be arrested. In this backdrop, the expression ‘not arrested’ in the charge-sheet is a misnomer and letters offering assistance to investigation mere lip service. Finally, non-bailable warrants of arrest came to be issued against them by the jurisdictional Court while have been affirmed by this Court in CRR 3462 of 2022.

18. Hence, requirements of **Satender Kumar Antil** (supra) are not satisfied so as to hold that the petitioners are automatically entitled to pre-arrest bail de hors the nature and gravity of allegations and their involvement therein.

19. Principles to grant anticipatory bail are stricter than that of regular bail. The Court must consider the nature and gravity of the offence and role attributed to the accused while considering prayer for anticipatory bail².

20. In **Gurbaksh Singh Sibbia etc. vs. The State of Punjab**³ the Apex Court held as follows:-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility

² See Sushila Aggarwal And Ors vs. State (NCT of Delhi) And Anr, (2020) 5 SCC 1 (para 92.4)

³ (1980) 2 SCC 565

of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail."

21. With regard to the gravity of the offence and involvement of the petitioners therein, we have considered the materials on record. In the subsequent letter the de-facto complainant alleged the petitioners raised various demands upon him. Pursuant to such demands, he was compelled to give expensive gifts, arrange lavish parties and holidays at exotic resorts. Statement of relations of the de-facto complainant and his business associates also support this allegation. But in the WhatsApp messages of Rashika including the one on 16.02.2021 at 02:03 PM just prior to her death, there is no whisper that she had been tortured over demands of dowry. In this backdrop, whether the torture meted out to the victim-housewife was for or in connection with demands of dowry requires to be thrashed out in the backdrop of attending circumstances during trial.

22. However, there are allegations that the husband Kushal was a wayward man. It is alleged he subjected his wife to physical and mental torture. Kushal was arrested and after detention for about four months has been enlarged on bail by this Court on 11.11.2022.

23. Allegations against petitioners are essentially of abetment to suicide by infliction of mental cruelty on the victim-housewife. In her WhatsApp messages, Rashika alleged she was constantly harassed and humiliated by petitioner No.1. Relevant WhatsApp messages are set out hereinbelow:-

*“Papaji also scolds
I get so scared*

*He lies to Komal di about whatever he
wants to just to gain sympathy*

*these people were taking about proof
against me and showing it to
everyone.”*

*“Two days ago my father in law tells
Mom in law that Tum kothe se paisa
kama ke lati ho kya
Rashika tum kharcha chala lena”*

*“Papaji has literally tortured me
mentally! There is NOONE bigger
than him in this world!
He things of himself as the best! I have been
walking three times a day he still
wants to give gyaan! As if he is thin!
Kushal himself is one more ultra non-
caring man on this earth.”*

24. From these WhatsApp messages, it appears peititioner No. 1 regularly misbehaved and harassed Rashika which made her depressed and unhappy. His crude and abusive behaviour coupled with his conniving indifference towards Kushal’s misdeeds exacerbated the torture on Rashika. Finally, she committed suicide on 16.02.2021, stating in her last WhatsApp message that it is better for her to die than live with her in-laws.

25. During her lifetime Rashika had made serious insinuations about ill-treatment and misbehaviour by her father-in-law, that is, petitioner No.1. Hence, we are unable to persuade ourselves that the allegations of torture levelled against him are prompted through malice or have been falsely levelled for the purpose of humiliating and harassing him.

26. But a different picture appears vis-à-vis the mother-in-law, petitioner No.2. In none of the WhatsApp messages of the deceased there is even a whisper of ill-treatment or misbehaviour by her.

27. Aforesaid sterling materials collected during investigation show petitioner No.1 had harassed and humiliated the housewife during her lifetime. She committed suicide within one year of marriage. Allegations against petitioner No.1 cannot be said to be prompted out of malice and ought to be read in the light of statutory presumptions available in law.

28. But no corroborative materials supporting the allegations levelled against petitioner No.2 has transpired in the course of investigation.

Conclusion:-

29. In the light of the aforesaid discussion, we are of the considered view petitioner No.2, Neelam Agarwal, may be granted anticipatory bail.

30. Accordingly, we direct that in the event of arrest, petitioner No.2, namely, Neelam Agarwal shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of like amount each, to the satisfaction of the arresting officer and also subject to the conditions as laid down under section 438(2) of the Code of Criminal Procedure, 1973 and on condition that petitioner No.2 shall appear before the court below and pray for regular bail within a period of four weeks from date.

31. The prayer for anticipatory bail of petitioner No.1, Naresh Kumar Agarwal is unmerited and accordingly rejected.

32. Needless to mention observations in this order are for the purpose of disposal of this application and shall not have any bearing at the subsequent stages of the proceeding including trial.

33. The application for anticipatory bail is, thus, disposed of.

34. Case diary is returned to the learned Public Prosecutor.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)