

RESERVED

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION
U/S 438 CR.P.C. No. - 1625 of 2022

Applicant :- Pawan Agarwal

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

Counsel for Applicant :- Vikas Vikram Singh, Amit Jaiswal Ojus
Law

Counsel for Opposite Party :- G.A., Huzoor Alam Alvi, Ishan
Baghel, Kaushal Kishore Tewari, Shashank Singh

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Dileep Kumar, learned Senior Advocate assisted by Sri Vikas Vikram Singh, Amit Jaiswal, Mohit Singh and Sri Sudhanshu Kumar, learned counsel for the applicant, Sri Vinod Kumar Shahi, learned Additional Advocate General, U.P. assisted by Sri S.P. Tiwari and Sri Vinay Kumar Shahi, learned AGA and Sri I.B. Singh, learned Senior Advocate assisted by Sri Shashank Singh and Sri Ishan Baghel and Sri Vivek Rai, Sri H.A. Alvi, Sri Jeeshan Alvi, Sri Ashish Gulati and Sri Kaushal Kishore Tewari, learned Advocates on behalf of victims.

2. This anticipatory bail application has been filed by the present applicant (Pawan Agarwal) apprehending his arrest in Case Crime /F.I.R. No.0317 of 2022, under Sections 304/308 I.P.C., Police Station-Hazratganj, District-Lucknow.

3. Learned counsel for the applicant has submitted that the present applicant has been falsely implicated in this case as he has not committed any offence as alleged in the prosecution story so narrated in the First Information Report (in short F.I.R.).

4. Attention has been drawn towards annexure No.2 of this bail application which is an F.I.R. wherein there are 04 accused persons including the present applicant.

5. On account of the prosecution story, so narrated in the F.I.R., on 05.09.2022 at about 7:00 a.m. fire broke out in the Hotel Levana Suites situated at Madan Mohan Malviya Marg, Lucknow, resultant

thereof a smoke was filled up in the Hotel, which resulted in the death of 04 innocent persons due to suffocation and 07 persons got injured and became unconscious. The Fire Fighters, Team of S.D.R.F. and Local Police tried to control the fire. The reason for breaking out such fire is still untraceable. As per allegations, there was no provision in the Hotel which could have resulted in letting the smoke out of the Hotel. Iron Grills were installed outside the windows which caused trouble in dousing the fire. Owners and Managers of the Hotel had knowledge that in case of any emergency lives will be lost but no preventive measures were taken which resulted in the incident.

6. On the first date of admission on 29.09.2022, learned Senior Advocate on behalf of the applicant has informed that out of 04 accused persons, 03 accused persons, except the present applicant, have been arrested. He has also informed that the accused persons, namely, Rohit Agarwal and Rahul Agarwal, who are his family members as Rohit Agarwal is son of the present applicant; and Rahul Agarwal is a nephew of the present applicant, are in judicial custody and there is no male member left in the family except the present applicant. He has also informed that the present applicant is an old aged ailing person and is ready to co-operate in the investigation, therefore, his liberty may be protected. His counsel has submitted that when the son and nephew of the present applicant, who were managing the affairs of the Hotel, are behind the bar, therefore, the custodial interrogation of the present applicant would not be required.

7. Some of the learned counsels have also appeared on behalf of the victim and requested to file their respective counter affidavits.

8. Considering the aforesaid submissions, this Court passed an order dated 29.09.2022 directing the learned counsels for the victims to file their respective counter affidavits and also directing the learned Additional Government Advocate to seek complete instructions in the matter, summon the case diary to show the Court and also seek specific instructions as to whether the custodial interrogation of the present applicant would be required even if he participates in the investigation properly. For convenience, the order dated 29.09.2022 reads as under:-

"Heard Sri Dileep Kumar, learned Senior Advocate, assisted by Sri Vikas Vikram Singh and Sri Amit Jaiswal, learned counsel for the applicant as well as

Sri S.P. Tiwari and Sri Vinay Kumar Shahi, learned Additional Government Advocates for the State. Sri Shashank Singh, Sri H.A. Alvi, Sri Jeeshan Alvi, Sri Ashish Gulati and Sri Kaushal Kishore Tewari, learned Advocates, have filed their Vakalatnamas on behalf of the victims.

Learned counsel for the applicant has filed supplementary affidavit, the same is taken on record.

Since counsels for the victims have requested that they may be provided copy of the anticipatory bail application so that they could file counter affidavit, therefore, while filing counter affidavit, those Advocates shall enclose their Vakalatnamas in such counter affidavits.

Learned Senior Advocate has submitted that the present applicant is apprehending his arrest in Case Crime/ FIR No.0317 of 2022, under Sections 304 & 308 IPC, Police Station- Hazratganj, District- Lucknow. He has further submitted that all male family members are in jail pursuant to the FIR in question and the applicant being an old aged person of 75 years is suffering from various ailments, which have been indicated in paras- 29 & 30 of the application, therefore, his liberty may be protected as the applicant undertakes that he shall cooperate with the investigation and shall not avoid the process of law in any manner whatsoever. It has also been submitted that the custodial interrogation of the present applicant may not be required. Learned Senior Advocate has also submitted that if in this critically ailing condition, which has been indicated in para 30 of the application, the applicant is taken into custody, his life would be endangered, therefore, any interim protection may be given to him.

On that learned AGA as well as learned counsels for the victims have raised strong objection. Learned counsels for the victims have submitted that they may be granted some shortest time to go through the contents and enclosures of the anticipatory bail application and to file counter affidavit. They have submitted that they are not seeking much time and they

shall utilize the period of Dussehra vacation in preparing the counter affidavit and providing the advance copy to the learned counsel for the applicant so that in such period, any rejoinder affidavit, if the applicant so desires, may be filed. Therefore, they are requested that without providing them one opportunity, as prayed above, no relief may be granted to the present applicant in the ends of justice to the family members of the deceased. Learned AGA has also prayed that he may be granted some short time to seek written instructions and call case diary to assist the Court on the next date. Further, he may seek specific instruction as to whether the custodial interrogation of the applicant would be required, if he participates in the investigation properly.

Having considered the aforesaid submissions of learned counsel for the parties, I hereby direct the learned counsel for the applicant to provide copy of this anticipatory bail application to the above named counsels within 24 hours, to be more precise on or before 30.09.2022. Thereafter, learned counsels for the victims may prepare the counter affidavits within a further period of three days, to be more precise on or before 04.10.2022. After preparation of the counter affidavits, advance copy of such counter affidavits shall be provided to the learned counsel for the applicant, if possible, within 48 hours, to be more precise on or before 06.10.2022. Learned counsel for the applicant may file reply to the aforesaid counter affidavits within a further period of three days, to be more precise on or before 09.10.2022 and copy of such affidavit may be provided to the learned counsel for the victims/ learned AGA for their perusal.

The aforesaid time schedule has been fixed considering the fact that learned Senior Advocate has pressed the interim relief application in the present case referring paras-29 & 30 of the application wherein old age and ailment of the present applicant have been indicated.

List this case on 10.10.2022 as fresh at 12:30 PM or immediately after fresh cases, whichever is earlier, for

the reason that Senior Advocate is to come from Allahabad, therefore, time has been fixed.

It is made clear that on the next date, the present anticipatory bail application may be disposed of finally on the basis of material available on record and the arguments advanced by the learned counsel for the parties and if the disposal of the case would take some time, at least interim relief application may be disposed of on that date.

Therefore, the parties shall come prepared on the next date."

9. On 10.10.2022, the parties have exchanged their affidavits. Even counter affidavit has been filed on behalf of the State also. Therefore, short time was prayed by the learned counsel for the applicant to file reply/ rejoinder affidavit.

10. On 14.10.2022, learned counsel for the parties have submitted their arguments but those arguments could not be concluded. The next date was fixed for 17.10.2022.

11. Sri Dileep Kumar, learned Senior Advocate on behalf of the present applicant has submitted that the impugned F.I.R. has been lodged under Sections 304 and 308 I.P.C. The maximum punishment under Section 308 I.P.C. is seven years or fine or both. However, punishment under Section 304 I.P.C. is imprisonment for life or imprisonment for ten years if culpable homicide not amounting to murder is done with intention of causing death. However, if act is done with the knowledge that it is likely to cause death, but without any intention to cause death, the imprisonment is ten years or fine or both. He has further submitted that if the death is caused due to any negligent act, then such offence shall fall within the category of Section 304-A I.P.C. and in that case, the imprisonment would be for two years or fine or both.

12. Sri Dileep Kumar, learned Senior Advocate has submitted that if the allegations of the F.I.R. is taken on its face value, however it is not admitted, which says that act of the present applicant is done with the *knowledge* that it is likely to cause death, but without any intention to cause death, and in that case the imprisonment may be for ten

years, **or** fine **or** both, meaning thereby in such case the learned trial court may only award the fine against the accused persons.

13. Sri Dilip Kumar, learned Senior Advocate has submitted that the factum of *knowledge* as per Section 304 I.P.C. would be missing in the present case inasmuch as all possible preventive measures were taken in the Hotel, however, the aforesaid fact may be established during investigation. But in that case too, the only punishment of fine may be awarded.

14. So as to substantiate his arguments that in the present case the offence in question at the best may be considered 'as causing death by negligent act' as defined under Section 304-A I.P.C. wherein the maximum punishment is two years or fine or both, Sri Dileep Kumar has drawn attention of this Court towards the decision of Apex Court rendered in re: ***Sushil Ansal vs. State through Central Bureau of Investigation*** reported in **(2014) 6 SCC 173** wherein fire had broken out in a Cinema Hall in the name of 'Uphar Cinema' of Sunil Ansal and Gopal Ansal and 59 persons succumbed due to lethal carbon monoxide. The prosecution in that case had pleaded that the offence of those accused persons should be tried under Section 304 Part-II whereas learned Advocates from the side of those accused persons had pleaded that the offence, if any, committed by those accused persons should be considered under Section 304-A I.P.C.

15. Sri Dileep Kumar, learned Senior Advocate has referred paras-192 and 199, which read as under:-

"192. In the appeal filed by AVUT against the order passed by the High Court in the above revision petition, they have agitated the very same issue before us. Appearing for the Victims Association, Mr. Tulsi argued that the acts of omission and commission of Ansal brothers by which the egress of the patrons was obstructed warranted a conviction not merely for the offence punishable under Section 304-A IPC but also for the offence punishable under Section 304 Part II since according to the learned counsel the said acts were committed with the knowledge that death was likely to result thereby. Mr. Tulsi in particular contended that the act of installing an eight-seater box that entirely blocked the right-side exit in the balcony was itself sufficient for the Court to order a retrial of

the Ansal brothers, since they knew by such an act they were likely to cause death of the patrons in the event of a fire incident. On that premise, he contended that the matter should be remanded back to the Trial Court for retrial for commission of the offence punishable under Section 304 Part II. In support of the contention that the fact situation in the case at hand established a case under Section 304 Part II.

196. The decision in Alister Anthony Pereira's case (supra) or that delivered in Sanjeev Nanda's case (supra) does not lay down any specific test for determining whether the accused had the knowledge that his act was likely to cause death. The decisions simply accept the proposition that drunken driving in an inebriated state, under the influence of alcohol would give rise to an inference that the person so driving had the knowledge that his act was likely to cause death. The fact situation in the case at hand is not comparable to a case of drunken driving in an inebriated state. The case at hand is more akin on facts to Keshub Mahindra's case (supra) where this Court was dealing with the question whether a case under Section 304 part II was made out against the management of Union Carbide India Ltd., whose negligence had resulted in highly toxic MIC gas escaping from the plant at Bhopal. The trial Court in that case had framed a charge against the management of the company for commission of an offence under Section 304 Part II, IPC, which was upheld by the High Court in revision. This Court, however, set aside the order framing the charge under Section 304 Part II and directed that charges be framed under Section 304A IPC instead."

(emphasis supplied)

16. Sri Dileep Kumar, learned Senior Advocate has also drawn attention of this Court towards one decision of High Court of Mumbai rendered in ***Criminal Bail Application No.850 of 2014; Abdul Salim Shaikh (Siddique) and another vs. State of Maharashtra reported in (2014) SCC OnLine 1773*** referring para-37 to explain that even if the allegation of the F.I.R. is considered on its face value, however, the same is not admitted, to the extent that the applicants were having

knowledge to the effect that in case of any miss-happening serious casualty can take place, in that case too the present applicant may not be said to be aware about the untoward situations inasmuch as there is difference between 'knowledge' and 'awareness'. In case of 'knowledge' of any miss-happening, at the best the offence under Section 304-A IPC may be made out. Para-37 reads as under:-

"37. The theory of the applicants having 'knowledge' is pressed on the basis that the applicants were aware of the danger and the risk involved in the said construction work. This 'awareness' ought not to be confused with 'knowledge' as contemplated by Section 299 IPC. It must be clearly understood that knowledge on the part of the offender about the possible danger or risk involved in his rash or negligent act, is implicit even in the penal liability u/s, 304 A of the IPC. In fact, if there would be no such knowledge, there would be no criminal liability - even under section 304 II IPC at all. The 'knowledge' contemplated by section 299 is of a different nature and degree, and not of the type that is implicit in the concept of criminal rashness or criminal negligence, contemplated by section 304 A of the IPC."

(emphasis supplied)

17. The learned Senior Advocate has shown the copy of order dated 15.11.2019 passed by the Apex Court in ***Special Leave to Appeal (Crl.) No.6314 of 2015; The State of Maharashtra vs. Abdul Salim Shaikh (Siddique) and another*** whereby the special appeal challenging the aforesaid order of High Court of Bombay has been dismissed and direction has been issued to expedite the trial.

18. Therefore, Sri Dileep Kumar, learned Senior Advocate has submitted that, prima-facie, the offence in question falls within the purview of Section 304-A and 308 I.P.c., in that case the punishment is below seven years and the Investigating Agency should issue notice under Section 41-A Cr.P.C. in terms of dictum of Apex Court rendered in ***Arnesh Kumar vs. State of Bihar*** reported in ***(2014) 8 SCC 273*** to participate in the investigation. In such circumstances, the applicant should not be arrested. However, he reiterates that all the aforesaid facts and the offence, if any, may be verified after completion of investigation.

19. Sri Dileep Kumar, learned Senior Advocate has also submitted that in the counter affidavit filed by the State, it has no where been indicated as to whether the custodial interrogation of the present applicant would be required or not, however, the specific query was put by this Court vide order dated **29.09.2022** (*supra*). Therefore, it may be presumed that custodial interrogation of the present applicant is not required if he co-operate in the investigation properly.

20. So far the submission regarding old age and ailments of the present applicant are concerned which have been indicated in paras-30 and 31 of the application supported with the medical prescriptions which have been annexed with the Annexure No.3, the present applicant is a patient of 'Chornic Kidney Disease which can result in Mild Renal Failure and Diabetic Nephropathy, Chronic Interstitial Bilateral Renal Calculus Disease'. In one of his medical examination test conducted on 07.05.2022 his age has been indicated as 74 years, 05 months and 16 days. Therefore, the present applicant is about 75 years of age.

21. Sri Dileep Kumar, learned Senior Advocate has also shown some correspondences and documents which have been annexed with this anticipatory bail application as well as with the rejoinder affidavit filed on 13.10.2022 to show that the affairs of the Hotel in question was being managed by Sri Rahul Agarwal, the nephew of the present applicant. All the relevant correspondences with the authorities and by the authorities have been done by Sri Rahul Agarwal. Even the Lucknow Nagar Nigam, Government of U.P., issued licence certificate in favour of Hotel in question to Sri Rahul Agarwal and as per such certificate, which has been annexed as Annexure No.18 to the rejoinder affidavit, the said Hotel was duly registered till 31.03.2024 but its renewal was required every one year.

22. Learned Senior Advocate for the applicant has however submitted that he is not disputing the fact that the present applicant is one of the Directors of such Company but being an old aged ailing person he was not managing the affairs of the Company and those affairs were being managed by Sri Rahul Agarwal who is under judicial custody, therefore, the police may very well interrogated him strictly in accordance with law. However, he is not denying his co-operation, rather, he is giving undertaking that he shall co-operate in the investigation properly and shall follow all the directions of the Investigating Officer which are necessary to conduct and conclude the investigation. Therefore, liberty of the present applicant may be

protected till completion of investigation or till filing of the police report, if any, under Section 173 (2) Cr.P.C.

23. Per contra, Sri Vinod Kumar Shahi, learned Additional Advocate General of U.P. assisted by Sri S.P. Tiwari and Sri Vinay Kumar Shahi, learned Additional Government Advocates has submitted that looking into the severity of offence of the present applicant and also the fact that 04 persons succumbed to the injuries and 07 persons were injured on account of improper safety measures of the Hotel of which the present applicant is one of the Directors, he is not entitled for anticipatory bail.

24. Sri Shahi has further submitted that the Hotel in question was being run in the residential area and the building of Hotel was not declared as Hotel, rather, it was the residential property but such Hotel was being run in an unauthorized manner without having any proper sanction from the Competent Authority. He has also submitted that even the Lucknow Development Authority (in short L.D.A.) had cancelled the map so submitted by the Management of Hotel and direction was issued to remove unauthorized constructions but the Management of Hotel did not pay any heed and continued its illegal activity, which resulted in an unfortunate incident causing death of 04 persons.

25. Sri Shahi has further submitted that since some of the officers/officials of L.D.A. had not taken proper steps to check the illegal activities of the Hotel in question, therefore, those have been suspended and legal action has been taken against them. Not only the above, the officers/officials of the Fire Department and State Excise Department have also treated such property as Hotel and issued No Objection Certificate and licence to run the Bar, therefore, those officers/officials have also been suspended and legal action has been taken against them. Further, the management of the Hotel showing itself as a Hotel took favour from the Electricity Department.

26. Sri Shahi has submitted that the authorities have treated the said property as Hotel but the property in question may not be treated as Hotel only for the reason that those aforesaid authorities have treated such property as Hotel. Such property can only be treated as Hotel only under the Sarais Act, 1867 (in short the "Act, 1867") and no such letter has been annexed by the applicant to show that the property in question has got any licence under the Act, 1867. Therefore, the present applicant is not entitled for any relief.

27. On being confronted the learned Additional Government Advocate as to why no specific submission/ averments have been given in the counter affidavit to disclose that the custodial interrogation of the present applicant would be required. On that, Sri Shahi has submitted that at this stage the investigation is going on and the co-operation of the present applicant would be required but the present applicant is not co-operating in the investigation.

28. Sri I.B. Singh, learned Senior Advocate assisted by Sri Shashank Singh and Sri Ishan Baghel appearing on behalf of the victims has also opposed the request of learned counsel for the applicant for granting anticipatory bail. Besides, other Advocates, namely, Sri Vivek Rai, Sri H.A. Alvi, Sri Jeeshan Alvi, Sri Ashish Gulati and Sri Kaushal Kishore Tewari, have also appeared on behalf of victims have submitted that they are following the arguments of learned Senior Advocate Sri I.B. Singh and have requested that their counter affidavits may be considered.

29. Sri I.B. Singh, learned Senior Advocate has submitted with vehemence that the Hotel in question was nothing but a death trap inasmuch as the windows of the rooms of the Hotel in question were covered with Iron Grills. In the Hotel in question, no safety and preventive measures were available and on account of those Iron Grills fastened on the windows the victims could not rescued with promptness, resultant thereof, 04 persons succumbed to suffocation.

30. Sri Singh has also submitted that the case laws so cited by the learned Senior Advocate for the appellant would not be applicable in the present case inasmuch as in those cases the charge-sheet has been filed, whereas in the present case the investigation is going on. Therefore, at this stage, it may not be presumed as to under what sections the charge-sheet against the present applicant would be filed.

31. Sri Singh has also submitted that since the victims have lost their lives on account of illegal and irresponsible act of the Owners and Managers of the Hotel Management having full knowledge that in case of any miss-happening the serious casualty would take place, no sympathy can be prayed by the applicant citing his old age and ailment.

32. Sri Singh has cited the decision of High Court of Karnataka at Bengaluru rendered in re: *Petition No.3377 of 2021; Smt. Ashwini S.*

vs. State of Karnataka referring para-12 that old age and ailing condition of an accused may be considered only if he / she applies for regular bail not the anticipatory bail.

33. Sri Singh has also cited the decision of High Court of Bombay rendered in re: *Anticipatory Bail Application No.269 of 2019; Subhak Jamnadas Mapara vs. State of Maharashtra* to submit that even if the present applicant was not managing the affairs being an ailing person, he may not be absolved from the allegations if there are some mishappening on account of breaking out the fire in any premises.

34. Sri Singh has also cited the dictum of Apex Court rendered in re: *G.R. Ananda Babu vs. State of Tamil Nadu and another reported in (2021) SCC OnLine SC 176* to submit that old age and ailing condition may not be considered granting anticipatory bail.

35. Sri Singh, learned Senior Advocate has further submitted that the benefit of Section 437 Cr.P.C. extended to the old age ailing persons besides the female and infant may not be applicable in the case of 438 Cr.P.C., therefore, he has submitted that the present anticipatory bail application may be rejected.

36. Replying to the aforesaid objections of learned counsel for the opposite parties, The learned Senior Advocate on behalf of the present applicant has referred some enclosers of the rejoinder affidavit to show that the safety measures were there in the Hotel to make out of any untowards situation and in compliance of the directions of the Fire Department the extra stair cases and some fire equipments have been fastened in the Hotel. However, he has submitted that all the aforesaid facts may be seen and verified during investigation, therefore, he can only submit at this stage that those allegations of the opposite parties are not correct.

37. I have heard learned counsel for the parties and perused the material available on record.

38. At the very outset, it is made clear that I have not entered into merits of the issue and not giving any observation or findings affecting the investigation.

39. In the present case, admittedly the investigation is going on. Out of 04 accused persons, 03 accused persons are under judicial

custody from the very beginning. One of those accused persons, named Sri Rahul Agarwal was actively running the affairs of the Hotel and another accused named Sri Rohit Agarwal was also associating him being one of the Directors. Such accused Sri Rohit Agarwal is son of the present applicant. The present applicant is also one of the Directors.

40. Since the investigation is going on, therefore at this stage, it cannot be said or presumed as to under what sections the charge-sheet would be filed but there is one Section i.e. 308 I.P.C. in the F.I.R. wherein the maximum punishment is upto seven years or fine or both and for Section 304 Part-II I.P.C. the punishment may be 10 years or fine or both.

41. Considering the observations of the Apex Court rendered in re: *Sushil Ansal (supra)*, *Abdul Salim Shaikh (Siddique) (supra)* and *Arnesh Kumar (supra)* after completion of investigation the charge-sheet may be filed as per the investigation report so no observation of any kind whatsoever may be given at this stage but it is legitimately expected that the investigation would be conducted and concluded strictly as per law.

42. As per Sri Shahi, learned Additional Advocate General the proper co-operation of the present applicant in the investigation is required as no specific recital has been given in the counter affidavit that his custodial interrogation would be required. Therefore, if the present applicant co-operates in the investigation properly, the Investigating Agency would not suffer in any manner whatsoever.

43. Since the other accused persons are under the judicial custody, therefore, the Investigating Agency may interrogate them strictly in accordance with law. Further, since those accused persons, who are in judicial custody, were managing the affairs of the Hotel, therefore, the investigation may be conducted and concluded on the basis of their interrogation besides the interrogation of the present applicant who is also ready to co-operate in the investigation.

44. So far as the arguments of Sri I.B. Singh, learned Senior Advocate for the victim is concerned to the effect that the provisions of Section 437 Cr.P.C., which protects the liberty of infant or woman or sick or infirm person would not be applicable in case of Section

438 Cr.P.C., I find that the provisions of Section 437 Cr.P.C. are independent in nature which clearly provides the circumstances under which the bail may be taken in case of non-bailable offence. The anticipatory bail is also one of the species of bail. Further, when the provisions of Section 437 Cr.P.C. are applicable under Section 439 Cr.P.C. which provides the regular bail power of all the High Courts and Sessions Court, the application of Section 437 Cr.P.C. may not be barred for Section 438 Cr.P.C. if facts and circumstances convince the Court to pass such order.

45. So far as the decisions so cited by Sri I.B. Singh, learned Senior Advocate for the victims in re: **G.R. Anand Babu** (*supra*) is concerned, the Apex Court has deprecated the conduct of the applicant by filing successive anticipatory bail application. This is not a case wherein the successive anticipatory bail application has been filed by the present applicant.

46. Since the State Government has taken very prompt steps against erring officers/ officials of various departments and has assured that no erring officers/ officials, to be related with the management of Hotel or government officers/ officials of any department, therefore, it is legitimately expected that the required legal action against the erring persons would be taken strictly in accordance with law and the victims would be compensated aptly, as per law.

47. Since the present applicant, who is an old aged ailing person, is willing to co-operate in the investigation, there is no recital in the counter affidavit of the State that the custodial interrogation of the present applicant is required and he has given his undertaking that he shall not misuse the liberty of anticipatory bail, if granted, I find it appropriate that liberty of the present applicant may be protected till completion of investigation or filing of the police report under Section 173 (2) Cr.P.C. in terms of the dictum of Apex Court rendered in re: **Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98.**

48. Therefore, it is directed that in the event of arrest, applicant (Pawan Agarwal) shall be released on anticipatory bail in the aforesaid case crime number, till completion of investigation, on his furnishing a personal bond of Rs.1,00,000/- with two sureties each in the like amount to the satisfaction of the arresting authority/ court concerned with the following conditions:-

1. That the applicant shall make himself available for interrogation by the police officer as and when required;
2. that 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;
3. that the applicant shall not leave India without prior permission of the court;
4. that the applicant shall not pressurize/ intimidate the prosecution witnesses and shall not tamper with evidence during trial;
5. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
6. that in case of breach of any of the above conditions the court below shall have the liberty to cancel the bail;
7. that in default of any of the conditions mentioned above, the learned counsel for the State shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

49. Before parting with, the applicant is directed to appear before the Investigating Officer on 21.10.2022 at 11:00 a.m. sharp to cooperate in the investigation, shall abide by all the directions of Investigating Officer relating to the investigation and shall provide all the required documents which are in his possession and shall cooperate in the investigation till completion of investigation, failing which, benefit of this order shall not be provided to him and the Investigating Officer/ Court concerned would be at liberty to take any appropriate coercive steps against the present applicant which are permissible under law.

50. In view of the aforesaid terms, this anticipatory bail application is ***disposed of finally.***

Order Date :- 19.10.2022

[Rajesh Singh Chauhan,J.]

Suresh/