

A.F.R.

Court No. - 83

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 4560 of 2023

Applicant :- Udit Arya

Opposite Party :- State of U.P.

Counsel for Applicant :- Jitendra Prasad, Satya Prakash Rai

Counsel for Opposite Party :- G.A., Anil Mullick

Hon'ble Krishan Pahal, J.

1. List has been revised.

2. Heard Sri C.L. Pandey, learned Senior Advocate assisted by Sri Jitendra Prasad, learned counsel for the applicant, Sri Anil Mullick, learned counsel for the informant and Sri V.K.S. Parmar, learned A.G.A. for the State as well as perused the record.

3. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.310 of 2022, registered under Sections 498-A, 304-B I.P.C. and $\frac{3}{4}$ Dowry Prohibition Act, at Police Station Ganga Nagar, District Meerut with a prayer to enlarge him on anticipatory bail.

PROSECUTION STORY:

4. The marriage of the applicant was solemnized with the daughter of the informant as per Hindu rites on 13.12.2021. The applicant and other members of the family are stated to have subjected her to cruelty for demand of Rs.60 lakhs and a car as dowry. In the intervening period in the month of September, 2022, the deceased is stated to have undergone the abortion of the fetus she was carrying in her womb. On Deepawali i.e. 18.10.2022, the applicant is stated to have taken the daughter of the informant to his house. The applicant and other family members are stated to have beaten the daughter of the informant as such the informant had taken her to his house on 21.10.2022. The condition of the daughter of the informant deteriorated as a result of the injuries sustained on 21.10.2022.

She is stated to have succumbed to the injuries on way to hospital on 22.10.2022.

RIVAL CONTENTIONS

(Arguments on behalf of applicant)

5. Learned Senior Counsel for the applicant has vehemently argued at the outset that this is clear misuse of dowry laws as no case is made out against the applicant. There is not a whisper of complaint against the applicant or other family members before institution of the present FIR. Learned Senior Counsel has stated that the deceased person was ill and was suffering from dengue and even the applicant transfused blood to her on 20.10.2022, the said transfusion certificate is filed as Annexure No.12 to the affidavit filed with the bail application.

6. Learned Senior Counsel has further stated that the platelets count of the deceased person had extremely come down to a level where blood transfusion was essential as the applicant had himself volunteered to do so.

7. Learned Senior Counsel has also placed much reliance on the inquest report of the deceased person which indicates that there was no visible injury on the body of the deceased person. Learned Senior Counsel has also vehemently argued that as per the postmortem report, the cause of death was "septicaemia due to chronic illness of multiple organs involvement". Learned Senior Counsel has stated that the cause of death is her illness and not the injuries inflicted by the applicant or any other family members. The prosecution story stands falsified on this ground only. Learned Senior Counsel has further stated that if such FIR is entertained by the Court, then there is no question for civil liberty left as such applicant is entitled for anticipatory bail. The applicant has no criminal history to his credit.

8. Learned Senior Counsel has also placed reliance on the statement of Dr. Geetanjali Vohra, who happens to be family doctor of the informant,

whereby she has categorically stated that the deceased person had acquired complications as a result of pregnancy she was having and her fetus in the womb had died after a period of six months of pregnancy. Learned Senior Counsel has also placed reliance on the said statement in detail. To avoid verbiage, the said details of statement of doctor are not being mentioned here. Learned Senior Counsel has also placed reliance on the various Whatsapp chats between the applicant and the deceased person, which indicate that they were living happily.

9. Learned Senior Counsel has also placed much reliance on the judgment of this Court passed in *Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No.3532 of 2022*, whereby the concerned delinquent was enlarged on anticipatory bail on the ground that proceedings under Section 82 Cr.P.C. were initiated subsequent to the filing of the anticipatory bail application as such applicant is also entitled for bail on this ground as the proceedings under Section 82 Cr.P.C. had taken place on the date of filing of anticipatory bail application, i.e., 29.3.2023 at the trial court. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. The applicant has apprehension of his arrest. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail. The final report (charge-sheet) has not yet been filed.

(Arguments on behalf of informant/State)

10. Per contra, learned counsel for the informant has vehemently opposed the anticipatory bail application on the ground that the statement of the informant recorded by the Investigating Officer categorically indicates that the fetus had expired in her womb and she was not subjected to treatment by the applicant and his family members as the said

fetus remained dead for a period of ten days in her womb. The said negligent act speaks volume of the applicant having subjected the deceased person to cruelty.

11. Learned counsel has further stated that the said case law does not apply to the present case as the proceedings under Section 82 Cr.P.C. were already initiated on 24.3.2023 and the bail application was filed on 29.3.2023. Learned counsel has stated that as such applicant is also not entitled for anticipatory bail in the light of the judgment of the Apex Court passed in *Prem Shankar Prasad vs. State of Bihar and Another*, reported in *AIR 2021 SC 5125*, whereby it was held that if the delinquent is declared a proclaimed offender and proceedings under Section 82 & 83 Cr.P.C. have been completed, then he is not entitled for anticipatory bail, as such the present anticipatory bail application is liable to be rejected.

12. Learned A.G.A. has also opposed the anticipatory bail application and reiterated the submissions raised by the learned counsel for the informant.

CONCLUSION:

13. It is to be noted that the applicant has no criminal antecedents to his credit. It is an admitted fact that there were discord in the family as the deceased person was living at her parental home for a substantial period of time as the said abortion is even stated to have taken place at her parental home. After bare perusal of the case laws filed by the rival parties, I would like to take note of the judgment passed in *Prem Shankar Prasad (supra)*, whereby much reliance has been made on the judgment passed in **Lavesh vs. State (NCT of Delhi) [(2012) 8 SCC 730: AIROnline 2012 SC 323]** in paragraph 16 as under:-

"16. Recently, in Lavesh vs. State (NCT of Delhi) [(2012) 8 SCC 730: AIROnline 2012 SC 323], this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-a-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733)

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as 'absconder'. Normally, when the accused is 'absconding' and declared as a 'proclaimed offender', there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

14. It is true that in the judgment passed in **Lavesh (supra)**, the said applicant was not enlarged on anticipatory bail as the proceedings under Section 82 Cr.P.C. were complete. In the case of **Lavesh (supra)** there was no question of granting anticipatory bail. "Normally", when the accused was absconding and declared proclaimed absconder, the core of judgment in **Lavesh (supra)** was in the expression "normally" and when the accused absconded or concealed himself to avoid the execution of warrant.

15. Neither the proceedings under Section 82 Cr.P.C. nor Section 438 Cr.P.C. impose any restriction in the filing of anticipatory bail application by the proclaimed offender. Even in the **Lavesh (supra)** while laying down the law, the Supreme Court has used word "normally".

16. Section 438 Cr.P.C. was inserted to the Code as it was seen that the influential persons try to implicate their rivals in false cases for the purpose of disgracing them by detaining them in jail for some time. It is true, such powers are to be exercised in exceptional cases. The prosecution cannot be permitted to be converted into an arena to settle scores.

17. The deceased has expired as a result of "septicaemia due to chronic illness of multiple organs involvement". Thus, the death cannot be termed as "not under normal circumstances" as envisaged under Section 304-B I.P.C. The ingredients of Section 304-B I.P.C. do not stand fulfilled. This case seems to be a misuse of the dowry laws.

18. After hearing the rival contentions, going through the record, considering the nature of accusations and antecedents of the applicant and taking into note the very fact that the cause of death has been opined to be septicaemia due to chronic illness of multiple organs involvement and also that there was no complaint against the applicant or his family members before the death of the deceased person and also that no visible injury has been observed on the body of the deceased person internally or externally, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "*Sushila Aggarwal Vs. State (NCT of Delhi), (2020) 5 SCC 1*". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

19. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Udit Arya** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii). 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 him from disclosing such facts to the court or to any police officer or tamper with the evidence;
- (iii). that the applicant shall not leave India without the previous permission of the court;
- (iv). that in case charge-sheet is submitted the applicant shall not tamper with the evidence during the trial;
- (v). that the applicant shall not pressurize/ intimidate the prosecution witness;
- (vi). that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
- (vii). that in case of breach of any of the above conditions the court below shall have the liberty to cancel the bail.

20. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

[Krishan Pahal, J.]

Order Date :- 3.5.2023/ Vikas