

Court No. - 77

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 5397 of 2020

Applicant :- Smt Chantara

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Vashistha

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

Heard Mr. Ajay Kumar Vashistha, learned counsel for the applicant and Mr. Akhilesh Kumar Srivastava, learned A.G.A. appearing for the State.

Perusal of the record shows that this Court after hearing the submissions advanced by learned counsel for the applicant granted an interim protection on 09.09.2020 allowing two weeks' time for the State to file counter affidavit.

Submission germane to the matter is that husband and father-in-law of the deceased have already been acquitted by the court below. To substantiate the said fact, learned counsel appearing for the applicant passed on a certified copy of the acquittal order, which has been returned to him, after perusal. Applicant before this Court is mother-in-law of the deceased.

Acquittal of two accused persons by court below and interim protection to applicant by this Court in the offence under Sections 498A, 304-B, 201 IPC and 3/4 D.P. Act required attention of this Court to traverse to the pleadings of both anticipatory bail as well as counter affidavit closely to reach at a final conclusion in applicant's matter.

Bare perusal of reply given to the averments of anticipatory bail application in counter affidavit appears to be perfunctory and cavalier in manner as also bereft of any cogent or coherent factual and legal foundation as the Government Counsel Sri I.P.S. Rajpoot, AGA-I, (AOR-A/I-0034/2012) who drafted the affidavit did not hesitate in proving the applicant to be of criminal mind without adducing any substance in support thereof. Excerpt of the averments in paragraph - 10 of counter affidavit says "लेकिन प्रार्थिनी अभियुक्ता आपराधिक प्रवृत्ति की महिला है". Though no document is annexed. Remaining reply in entire counter affidavit rests on denial to each fact mentioned in anticipatory bail application. Contents of counter

affidavit reflects the impetuosity of Government Counsel as well as the deponent where each fact is negated sans due care constricting the role of the applicant as per their whims. This Court cannot turn a blind eye to such imprecise conduct of the deponent as well as learned Government Counsel brought in the counter affidavit. The reply quietly appears to be a transcription of parwise narratives sent by the concerned department. Surprisingly, most of the paragraphs i.e. paragraph Nos. 3 to 12 of the counter affidavit are sworn to be verified on the basis of record, however, nothing is brought on record in support thereof.

It is a staggering irony that deponent of counter affidavit, who is Deputy Superintendent of Police/ Circle Officer, Sahawar, District Kasganj, believed himself to be empowered with sanction to author a certificate of propensity of a person without any cogent material. Since 75th Independence Day Celebrations, Government has marked Azadi-ka-Amrit Mahotsav terming it to be 'Amrit Kaal' with prospective vision in welfare of citizens of the country, however, Police Administration feels more comfortable to remain with colonial structure. Such attitude of functionaries who are instrumental to safeguard the public at large diminishes the ingrained belief over the System and plays a role in impeding the goal set out to ascend to new heights of prosperity.

A bare reading of the averments in counter affidavit whereby the applicant is said to be of criminal intent appears to be on the basis of skewed information. No such officer is allowed to enjoy impunity on the pretext of discharging official functioning nor can be set free to form an audacious remark without any basis. It is the prime duty of the concerned A.G.A. also who drafts counter affidavit to acquire the material relying on which the averments being made in counter affidavit.

Taking note of such negligent pleadings in counter affidavits, in numerous cases, this Court has already warned the learned Government Advocate as well as learned AGAs repeatedly to be careful while dictating counter affidavits but seems to be with no result.

Let a personal affidavit be filed by the deponent of counter affidavit dated 22.9.2020 (Shailendra Singh Son of Sri Mahipal Singh, Deputy Superintendent of Police/ Circle Officer, Sahawar, District Kasganj), within ten days, as to what was in his possession for making statement in paragraph no. 10 of the counter affidavit. He shall remain present before this Court on the said date along with the record of the case.

Mr. I.P.S. Rajpoot, learned AGA-I, (AOR-A/I-0034/2012) shall also remain present before this Court on the next date fixed to explain his conduct of dictating counter affidavit in such irresponsible manner.

Let a copy of this order be placed before the learned Advocate General, U.P.; Government Advocate, High Court, Allahabad; Principal Secretary (Law), U.P., Lucknow and, Director General of Police, U.P. Lucknow.

List this case on 21.02.2023. Interim order, if any, is extended till the next date of listing.

Registrar General of this Court shall ensure that the order be communicated to all concerned forthwith.

Order Date :- 6.2.2023

Jitendra/-