

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12674 of 2021

Applicant :- Niha Khan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Sanjay Pathak, Arvind
Kumar Tewari

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

1. Heard Sri Sanjay Pathak, learned counsel for the applicant, Sri Manish Goyal, learned Additional Advocate General, assisted by Sri Sri A.K.Sand, learned A.G.A.-Ist, and other lawyers representing the State.

2. The instant application filed by the applicant Niha Khan invoking the powers of the Court under Section 438 Cr.P.C., apprehending her arrest in Case Crime No. 253 of 2021, under sections 203, 176, 465, 427 and 120B IPC, Section 3/4 Prevention of Damage to Public Property Act, 1984 and Section 3/4 Pandemic Act, Police Station- Civil Lines, District- Aligarh.

3. From the record, it is evident that, the applicant has approached this Court straight way without exhausting its course i.e. without getting the anticipatory bail rejected from the court below. However, reasons disclosed/ canvassed are quite convincing to hear and decide the instant anticipatory bail applicant on merits.

4. Prior notice of this bail application was served in the office of Government Advocate and as per Chapter XVIII, Rule 18 of the Allahabad High Court Rules and as per direction dated 20.11.2020 of this Court in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. 8072 of 2020, **Govind Mishra @ Chhotu Versus State of U.P.**, hence, this anticipatory bail application is being heard. Grant of further time to the learned A.G.A as per Section 438 (3) Cr.P.C. (U.P. Amendment) is not required.

5. Contentions raised by learned counsel for the

applicants that the applicant has got no criminal antecedent to her credit nor has undergone imprisonment after conviction by any Court of Law in relation with any cognizable offence, previously. In addition to this, an assurance was also given by learned counsel for the applicant on her behalf that she would render all required cooperation and assistance in the process of law and the investigating agency to reach its logical conclusion and shall not flee away from the course of justice.

Learned counsel for the applicant strenuously argued that the applicant has been made target just to besmirch her reputation and belittle her public estimate. Number of other arguments were advanced to demonstrate the falsity of the accusation made against her by the informant in the instant FIR. It was also canvassed that the applicant has got every reason to believe that she may be arrested by the police pursuant to the aforesaid FIR.

Learned counsel for the applicant has drawn the attention of the Court to number of citation in support of his contention, namely, **(i) Arnesh Kumar Vs. State of Bihar** reported in **AIR 2014 SC 2756**, **(ii) Jogendra Kumar Vs. State of U.P.** reported in **AIR 1995 SC 1349** and **(iii) Sanal Haque Vs. State of U.P.** reported in **2008 Cr.L.J. 1998** to buttress his contention, that in the event cooperation with the investigation is offered then there is no justifiable reason or occasion for the investigation to effect arrest of her at pre-cognizable stage.

6. Coming to the merits of the case, the aforesaid FIR was lodged by Dr. Durgesh Kumar translating some departmental inquiry conducted by two seniors government doctors at Aligarh and suggesting to lodge an FIR against two named accused persons including the applicant Ms. Niha Khan. The applicant was serving as ANM at Primary Health Centre, Jamalpur, Aligarh. After the conclusion of departmental inquiry, the instant FIR was got registered under the aforesaid penal sections of IPC as well as other penal enactments; that named accused person, was found prima facie involved in the alleged criminal wastage of Covid

vaccine. The inquiry report have also reported that 29 doses of vaccine were thrown in the garbage without administering the same to its respective beneficiaries but their names were uploaded over the Portal. Thus factually speaking, 29 persons were remained unvaccinated. It was argued by the learned counsel for the applicant that she was petty nurse at PHC has made escape on account of political inclination and affiliation. Besides this she has been falsely implicated in this web having no personal interest, in this act. The accusation made are not only vague and hazy and entire exercise of investigation would rendered in futility.

Learned Additional Advocate General in his counter argument vehemently opposed the contention raised by learned counsel for the applicant and has submitted that offence committed by the applicant is not an offence but a sin against the society. Even after lodging of the FIR she is playing all sorts of tricks and gimmicks to save herself from the clutches of the law and not at all cooperating with the investigation and exploring all possible avenues to sneak away from the judicial process. The applicant is somehow and other directly involved in the offence and keeping in view the gravity and nature of the offence her custodial interrogation is essentially required.

Without expressing any opinion about the ultimate merit of the case, the Court can express its nascent concern, that the offence for which the applicant is made accused is indeed a serious in nature and tends to adversely affect the society at large. Very recently the entire nation has witnessed the wrath of invisible virus, where thousands of citizens left us forever. Despite of the fact, we are having a limited resources, our scientist have done Yoemen's job in manufacturing the medicine as an antidote of this deadly virus to save our fellow citizens. The Govt. of India too being a welfare State is also on a mission mode and making all efforts to vaccinate its citizens pan India free of cost. Our health warriors tirelessly serving the patient day in and day out, without bothering their own comfort, rather risking their own life and their family

members.

Under the circumstances, we cannot afford to have any seepage or perforation in this mission. The Court records its deep concern about those 29 persons who remained unvaccinated and roaming around freely in the society as a potential carrier of its deadly virus under the misconception that they have been vaccinated. The Court also records its strongest exception to the fact that there is criminal wastage of precious medicine.

Taking into account the gravity of the offence, the alleged prima facie involvement of the applicant, the Court is afraid to exercise its power in favour of the applicant under Section 438 Cr.P.C. and accordingly the instant application seeking anticipatory bail stands **rejected**.

However, this Court cautioning the Investigating Officer not to sway away with any of the observation made above while making indepth and transparent probe into the case.

Needless to mention here, the Investigating Officer of the case would conclude its investigation with utmost professional way as early as possible but not beyond 90 day. The applicant is obliged to cooperate in the fair investigation so that the truth may come out and the guilty person may tried suitably to reach its logical conclusion.

Order Date :- 16.7.2021/Abhishek Sri.