

Court No. - 66

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 3849 of 2021

Applicant :- Rahul

Opposite Party :- State of U.P.

Counsel for Applicant :- Nishant Mehrotra, Mahendra Kumar
Maurya

Counsel for Opposite Party :- G.A., Saurabh Kumar

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard learned counsel for the applicant, Shri K.P. Pathak, learned AGA and Shri Saurabh Kumar, learned counsel for complainant.
2. Applicant has approached this Court by way of filing the present Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. after rejection of their Anticipatory Bail Application, vide order dated 18.2.2020 passed by Sessions Judge, Shamli, seeking anticipatory bail in Case Crime No.025 of 2020, under Sections 498A, 323, 504, 506, 377 IPC read with Section 3/4 D.P. Act, P.S. - Thanabawan, District - Shamli.
3. This Court has granted interim anticipatory bail to applicant on 23.2.2021, who is husband of first informant on the ground of offences being on account of matrimonial dispute.
4. It has been contended by Shri K.P. Pathak, learned A.G.A. as well as Shri Saurabh Kumar, learned counsel for complainant that before filing of this application, charge sheet was submitted on 23.6.2020, which was not disclosed by applicant. There are specific allegation against the applicant in the statement of victim recorded under Section 164 Cr.P.C. regarding committing unnatural sex and of demand of dowry.
5. Few factors and parameters, which this Court has to consider for exercising discretion for grant or refusal of anticipatory bail are nature and gravity of accusation, exact role of the accused, his or her antecedents, possibility of the accused to flee from justice, likelihood to repeat similar or other offence. Whether accusation are made only with the object of injury and causing humiliation to the accused or case is of large magnitude with possible effect on a large number of people. Greater care and caution is required while considering cases under Section 34 and 149 IPC. Further consideration of threat to complainant and witnesses and tempering of evidences are other relevant factors.

6. While considering anticipatory bail application this Court has to struck balance between two factors namely, no prejudice should be caused to the fair and free investigation and accused should not be subjected to harassment, humiliation and unjustified detention. This Court is justified to impose conditions spelt out in Section 437 Cr.P.C. and also other restrictive conditions if deem necessary in the facts and circumstances of a particular case including limit of the anticipatory bail but not in routine manner. An Anticipatory Bail Application has to be based on concrete facts (and not vague or general allegations) relatable to offence and why the applicants reasonably apprehends their or her arrest, as well as their version of the facts.

7. Considering the averments and material available on record as well as that applicant has not come up before this Court with clean hands and that there are serious allegations against him of assaulting his wife, committing cruelty upon her wife with regard to demand of dowry, committing unnatural sex with her wife without her consent, I do not find any reasonable ground to extend anticipatory bail of applicant.

In view of above, this application, is hereby, **rejected**.

Order Date :- 20.5.2022

Rishabh

[Saurabh Shyam Shamshery, J.]