

Court No. - 15

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 1016 of 2023

Applicant :- Shahjad Alais Mohammad Sajjad And Another
Opposite Party :- State Of U.P Thru. Prin. Secy. Home And
Another

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A informs that he has procured complete instructions in the matter including complete case diary and the charge sheet has been submitted in this case on 7.12.2021.

2. Heard Shri Manoj Kumar Singh, learned counsel for the applicants as well as learned A.G.A. for the State and perused the record.

3. The present anticipatory bail application has been moved by the accused/applicants- **Shahzad @ Mohammad Sajjad and Peena @ Shama Begam** in Case Crime No. 199 of 2021, under Sections 306, 506 IPC, Police Station Malhipur, District Shrawasti, with the prayer to enlarge her on anticipatory bail as she is apprehending arrest in the above-mentioned case.

4. Learned counsel for the accused-applicants while pressing the bail application submits that it is a case of false implication. In the FIR which has been lodged by the mother of the deceased various allegations have been levelled against the applicants with regard to the fact that only a day before marriage they refused to solemnize the marriage that daughter of the applicants on the pretext that Rs. one Lakh as agreed were not paid and humiliate the same the deceased (daughter) committed suicide by hanging herself. Postmortem report of the deceased would also reflect that she had died due to asphyxia as a result of ante-mortem hanging.

5. Learned counsel for the applicants has drawn attention of this court towards Annexure No.3, which is copy of an application given by the father of the deceased, namely, Mushtaque Ali on 24.5.2021, wherein it is stated that the deceased was under some kind of depression and in that state of mind she had

committed suicide.

6. It is vehemently submitted that this information has been given with utmost promptness and there was no time available to informant party to have manipulated the facts and no allegation of any kind has been levelled in this regard against the applicants or any other accused persons, in that informant however, after many days of written information an application under Section 156 (3) Cr.P.C. has been given by the informant and the allegations therein have been aggravated with the help of legal professional.

7. It is further submitted that during the course of investigation the applicants have approached this Court by filing an anticipatory bail application bearing CrI. Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No. 13759 of 2021 and vide order dated 29.11.2021 interim protection was granted and on 12.10.2022 the said anticipatory bail application was allowed and till submission of police report under Section 173 (2) Cr.P.C. liberty of the applicants was protected.

8. It is further submitted that under some bonafide belief the Coordinate Bench could not be informed about the submissions of the charge sheet which in this case has been filed on 7.12.2021 well before the date on which final order was passed in Anticipatory Bail Application No. 13759 of 2021.

9. It is vehemently submitted that the applicant have cooperated in the investigation, their liberty was protected during the course of investigation and since they have cooperated in the investigation the Investigating Officer did not find any opportunity or occasion to arrest them and thus their liberty be also protected during the trial.

10. Learned counsel for the applicant has relied on the law laid down by the Hon'ble Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and others : (2021) 10 SCC 773 and Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) and others, MANU/SC/0100/2020.

11. Learned AGA for the State submits that this second Anticipatory Bail Application moved on behalf of the applicants appears to be non-maintainable as the applicants had approached this Court earlier also. It is further submitted that on merits also having regard to the role played by the applicant in commission of crime they are not entitled for any protection.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that the applicants have earlier

approached this court by filing an anticipatory bail application which has been finally disposed on 12.10.2022 by a Coordinate Bench of this Court, however, the protection was granted till the submission police report under Section 173(2) Cr.P.C.

13. The Hon'ble Supreme Court in **Gurbaksh Singh Sibbia vs. State of Punjab** [(1980) 2 SCC 565 : 1980 SCC (Cri) 561], and in Sushila Aggarwal (supra) it is held that generally the order of anticipatory bail should not be for a limited period, however the court for reasons recorded may restrict the same for a specific period of time.

14. The same view has been opined in **Nathu Singh Vs State of U.P. and Others**, 2021(6) SCC 64, MANU/SC/0360/2021.

15. In Babu Singh and others Vs. State of U.P. (1978)1 SCC 579 has opined as under:-

"But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different consideration. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not over-turning an earlier negation."

16. In the case of **State of Madhya Pradesh vs. Kajad**, 2001 SCC (Cri) 1520 the Apex Court has observed in para 8 that:-

"8-.....It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier Judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann Vs. Harbhajan Singh Bajwa, (2001 [1] SCC 169) and various other judgments."

17. In the case of **Kalyan Chandra Sarkar V. Rajesh Ranjan @ Pappu Yadav and another** reported in AIR 2005 SC 921, it is opined that there is no *res judicata* so far as successive bail applications are concerned. Thus , it may be inferred from the scheme provided in the Cr.P.C. that moving of successive bail application and anticipatory bail applications are not barred, however, the subsequent bail applications can only be allowed when there are change in the circumstances.

18. This Court is of the considered view that an anticipatory bail application is primarily a bail application and the same is

also concerned with the personal liberty of a person. Difference between a Regular and anticipatory bail order has been highlighted by Hon'ble Supreme Court in Gurbaksh Singh Sibbia (supra) in following words:-

"7. The facility which Section 438 affords is generally referred to as 'anticipatory bail', an expression which was used by the Law Commission in its 41st report. Neither the section nor its marginal note so describes it but, the expression 'anticipatory bail' is a convenient mode of conveying that it is possible to apply for bail in anticipation of arrest. Any order of bail can, of course, be effective only from the time of arrest because, to grant bail, as stated in Wharton's Law Lexicon, is to 'set at liberty a person arrested or imprisoned, on security being taken for his appearance'. Thus, bail is basically release from restraint, more particularly, release from the custody of the police. The act of arrest directly affects freedom of movement of the person arrested by the police, and speaking generally, an order of bail gives back to the accused that freedom on condition that he will appear to take his trial. Personal recognisance, suretyship bonds and such other modalities are the means by which an assurance is secured from the accused that though he has been released on bail, he will present himself at the trial of offence or offences of which he is charged and for which he was arrested. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. Police custody is an inevitable concomitant of arrest for non-bailable offences. An order of anticipatory bail constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. Section 46(1) Of the Code of Criminal Procedure which deals with how arrests are to be made, provides that in making the arrest, the police officer or other person making the arrest "shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action". A direction under Section 438 is intended to confer conditional immunity from this 'touch' or confinement."

19. Thus, Prima facie there appears no bar in the Code of Criminal Procedure with regard to moving of subsequent bail applications under Section 439 Cr.P.C. and similarly there may

not be any restriction for moving anticipatory bail applications, if there is change in circumstances.

20. Thus in the considered opinion of this Court when an accused may move subsequent bail application he may also move subsequent anticipatory bail applications on the emergence of substantial change in facts and circumstances.

21. Coming to the merits of the instant case it could not be disputed that earlier the protection from arrest was granted by the a Coordinate Bench of this Court in favour of the applicants i.e. till submission of police report under Section 173(2) Cr.P.C. It also appears to be an admitted situation that now the charge sheet has been filed against the applicant. Nothing has been brought in the knowledge of the court which may suggest that the applicant has not cooperated in the investigation.

22. Thus, having regard to the law laid down in *Sushila Aggarwal v. State (NCT of Delhi)* (2020) 5 SCC 1 as well as in *Nathu Singh Vs State of U.P. and Others*, 2021(6) SCC 64, MANU/SC/0360/2021 the instant anticipatory bail application is worth allow and is **allowed**, as such. It is provided that in the event of arrest of the applicants- **Shahzad @ Mohammad Sajjad and Peena @ Shama Begam** in the above noted case under any process of the trial court or on their appearance/surrender before the trial court within **20 days from today i.e. on or before 29.01.2024**, whichever is earlier, they shall be released forthwith on anticipatory bail on their furnishing personal bonds with **two sureties** each in the like amount to the satisfaction of the Trial Court concerned, subject to the following conditions:

1. The applicants if not arrested earlier, shall surrender before the trial court within 20 days from today i.e. on or before 29.01.2024 and will cooperate in the trial.

2. The applicants shall not make any attempt to influence the prosecution witnesses and will also not commit any crime during their release on anticipatory bail.

3. The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence and especially when the prosecution witnesses are present in court.

4. The trial court in addition to these conditions may also impose any other suitable condition.

19. If in the opinion of the trial court default of any of the

condition placed above is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of their bail and shall proceed against him in accordance with law.

20. It is clarified that all the observations contained in this order are only for disposal of this anticipatory bail application and shall not affect the proceedings before the trial court in any manner.

Order Date :- 9.1.2024

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