

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 1576 of 2021

Applicant :- Smt. Namrata Jain And 3others

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

Counsel for Applicant :- Aklank Kumar Jain

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the applicants and learned A.G.A. for the State.

Order on Criminal Misc. Exemption Application

This exemption application is allowed.

Order on Criminal Misc. Anticipatory Bail Application

The instant anticipatory bail application has been filed on behalf of the applicants, **Smt. Namrata Jain, Shashikant Jain, Smt. Usha Jain and Smt. Beena Jain**, with a prayer to release them on bail in **Case Crime No. 778 of 2020, under Section-363 I.P.C., Police Station- Baraut, District- Baghpat**, during pendency of trial.

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.

The applicants have been implicated for offence u/s 363 I.P.C. Learned counsel for the applicants has submitted that the parties are closely related. There is allegation that a new born female child was taken from the house of the informant by the applicants. It is next submitted that the child was given in adoption in the month of February, 2020 but the necessary formalities could not be completed on account of lockdown. Thereafter, the informant has falsely implicated the applicants. The child was never stolen from her house but she gave the child to the applicants on her own. Subsequently, she has developed affection for the child and has implicated the

applicants only to get the child back. The applicants have no criminal history to their credits. They have definite apprehension that they may be arrested by the police any time.

Learned A.G.A. has opposed the prayer for anticipatory bail of the applicants. He has submitted that in view of the seriousness of the allegations made against the applicants, they are not entitled to grant of anticipatory bail. The apprehension of the applicants are not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

After considering the rival submissions, this Court finds that there is a case registered against the applicants. It cannot be definitely said when the police may apprehend them. After the lodging of F.I.R, the arrest can be made by the police at will. There is no definite period fixed for the police to arrest an accused against whom an F.I.R has been lodged. The courts have repeatedly held that arrest should be the last option for the police and it should be restricted to those exceptional cases where arresting the accused is imperative or his custodial interrogation is required. Irrational and indiscriminate arrests are gross violation of human rights. In the case of ***Joginder Kumar v. State of Uttar Pradesh AIR 1994 SC 1349***, the Apex Court has referred to the third report of National Police Commission wherein it is mentioned that arrests by the police in India is one of the chief source of corruption in the police. The report suggested that, by and large, nearly 60 percent of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2 percent of expenditure of the jails. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative. According to the peculiar facts and circumstances of the case, the arrest of an accused should be made.

Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicants, they are directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98***. The future contingencies regarding anticipatory bail being granted to applicants shall also be taken care of as per the aforesaid judgment of the Apex Court.

In the event of arrest, the applicants shall be released on anticipatory bail. Let the applicants involved in the aforesaid crime be released on anticipatory bail on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the trial court concerned with the following

conditions:-

1. The applicants shall not leave the country during the currency of trial without prior permission from the concerned trial Court.
2. The applicants shall surrender their passports, if any, to the concerned Court forthwith. Their passports will remain in custody of the concerned Court.
3. That the applicants 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;
4. The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicants.
5. In case, the applicants misuse the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.***
6. The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, default of this condition 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 proceed against them in accordance with law.
7. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.
8. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 27.1.2021

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