

**Court No. - 73**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 4421 of 2021

**Applicant :-** Smt Namrata Jain And 5 Others

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

**Counsel for Applicant :-** Akhilesh Kumar Jain

**Counsel for Opposite Party :-** G.A., Akhilesh Kumar, Gyan Prakash Ojha

**Hon'ble Siddharth, J.**

As per Resolution dated 07.04.2021 of the Committee of this Court for the purpose of taking preventive and remedial measures and for combating the impending threat of Covid-19, this case is being heard by way of virtual mode.

Heard learned counsel for the applicants, Shri Akhilesh Kumar and Shri Gyan Prakash Ojha, learned counsels for the informant and learned A.G.A for the State through video conferencing.

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, Smt. Beena Jain, Jatin Jain (Chaudhary), with a prayer to release them on bail in Case Crime No. 65 of 2021, under Sections- 420, 467, 468, 471 I.P.C., Police Station-Baraut, District-Baghpur, 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.

There is allegation regarding fabrication of adoption deed against the applicants. Learned counsel for the applicants has submitted that it is a case of false implication. The child was never stolen from her house but the parents of the child gave the child to the applicants on their own. The child was given in adoption in the month of February, 2020, thereafter First Information Report has been lodged on account of ulterior motives. The applicants have been falsely implicated in this case. They have no criminal history to their credit. The applicants have definite apprehension that they may be arrested by the police any time.

Learned counsel for the informant and learned A.G.A. have opposed the prayer for anticipatory bail of the applicants. They have 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 is 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 applicant. It cannot be definitely said when the police may apprehend him. 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 applicant and also the second surge in the cases of novel coronavirus and possibility of further surge of the pandemic, he is 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 applicant 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, at the time of execution of the bond, furnish his address and mobile number and shall not change the residence till the conclusion of investigation/ trial without informing the Investigating Officer of the police/ the Court concerned of change of address and the reasons for the same before changing the same.
2. The applicants shall not leave the country during the pendency of trial/investigation by police without prior permission from the concerned trial Court.
3. The applicants shall not obstruct or hamper the police investigation and not play mischief with the evidence collected or yet to be collected by the Investigating Officer of the police;
4. The applicants shall surrender his passport, if any, to the concerned Court/Investigating Officer forthwith. Their passport will remain in custody of

the concerned Court/ Investigating Officer till the investigation is completed. In case they have no passport, they will file their affidavits before the Court/ Investigating Officer concerned in this regard.

5. 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;

6. The applicants shall maintain law and order.

7. The applicants shall file an undertaking to the effect that he shall not seek any adjournment before the trial court on the dates fixed for evidence and when 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 applicant.

8. In case, the applicants misuses 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 and the Government Advocate/informant/complainant can file bail cancellation application.

9. 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 her bail and proceed against him in accordance with law.

10. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

11. 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.

12. The applicants are warned not to get themselves implicated in any crime and should keep distance from the informant and not to misuse the liberty granted hereby. Any misuse of liberty granted by this Court would be viewed seriously against the applicant in further proceedings.

This anticipatory bail application is being allowed on account of special conditions and on special ground. The normal grounds, settled for the grant of anticipatory bail, have not been considered by this Court and it would be open for the applicant to approach this Court again, if so advised, in changed circumstances.

The anticipatory bail application is allowed.

**Order Date :-** 12.5.2021

Atul kr. sri.