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THE COURT OF SESSIONS JUDGE, JHANSI.**Present: Jyotsna Sharma H.J.S.**

JO Code No.UP5386

Anticipatory Bail No. 2820 /2021**Kautilya Gaur**

Vs.

State of U.P.

U/Ss 376, 511, 354A, 354B, 509,
323, 504,506 IPC
P.S.Nawabad, District Jhansi.
Case Crime No.103/2021

ORDER

(1) This first anticipatory bail application under section 438 Cr.P.C. has been moved by applicant **Kautilya Gaur, P.O. Commercial Court** S/o late Sri J.K. Gaur, R/o House no. 454 Kamla Kavataras Luharpura in front of Masjid, G.T. Road Ghaziabad in Case Crime No. 103/2021 under sections 376, 511, 354A, 354B, 509, 323, 504,506 IPC P.S. Nawabad, District Jhansi, is taken up today for disposal.

(2) The relevant facts are as follows the complainant/informant victim got lodged an FIR against the Presiding Officer of Commercial Court, Jhansi, Sri Kautilya Gaur with the allegations that on 19.12.2020 at about 14.59 afternoon, she, (who admittedly is one of the ministerial staff working in that court) was sitting on her seat. The peon Ritik told her to reach the chamber of the P.O. There she found reader Mrs. Shamshad Bano exiting from P.O.'s chamber saying that she (victim) got employed in the said court on compassionate ground. It is alleged in the FIR that on entering the chamber, the P.O. shouted at her saying that how many spouses she had. She informed him that on death of her husband late Sri K.K. Yadav who was a Munsif Magistrate, she re-married retired judge Sri Rajendra Kumar and that the Hon'ble High Court has already been informed of her re-marriage. It is alleged that he refused to listen her and threatened that he will write to Hon'ble High Court for estopping her pension. He used foul words likes- कि रण्डी छिनार तुझे जजों से शादी करने का बड़ा शौक है। thereafter he bolted the door of his chamber and whipped out his revolver pointing towards her chest. He opened his belt and put down his pants and under garment and showed his private part saying that-आज अपने लिंग से तेरी गर्मी शांत करूंगा। He snatched away her mobile phone and when she tried to retrieve it he made her fall down on the table and also teared away her kurta and jacket. He also scratched on her left chest and abdomen. She sustained abrasions. It is also alleged that somehow she managed to come out. No official or any other person came to save her. She informed her husband and also called police by mobile call. The police opened the door of the office and only then she could come out. On the basis of the above written report a crime no. 0103/2021, under sections 376, 511, 354A, 354B, 509, 323, 504 and 506 IPC P.S. Nawabad District Jhansi was registered on 21.03.2021 and the investigation continues.

(3) Heard both the sides and pursued the papers on record.

(4) This anticipatory bail application has been given on the grounds that the applicant has been falsely implicated in this case with a motive that the misconduct of the informant may be cloaked. It is contended that at the time of alleged incident, the reader of the commercial court Ku. Shamshad Bano, orderly Ritik Patel, steno Deepak Kumar and gunner Awdhesh were present and that at that time the hearing in arbitration misc. no. 37/2011 was going on and it continued till 05.00 pm. At the time of alleged incident besides the members of the staff, advocates were also present. Had there been truth in the allegations, the above witnesses would have supported her. The reality is that the complainant/informant does not know her work and that she is thoroughly incompetent employee. Previous Judges Sri Chhotelal, Sri Ajai Krishn Vishvesh and Sri

Upendra Kumar wrote against her and certain adverse entries were also made in her service book. When the applicant/accused rejected her application for leave she resorted this tactics. On the date of incident, she felt annoyed by the queries made by the P.O. as regard name of her husband. Therefore she misbehaved. The FIR has been lodged with legal advice and has no substantance in it.

(5) This anticipatory bail application is forcefully opposed by the State. It is submitted by the D.G.C. (Crl.) that had the complainant/informant any intention to falsely implicate the applicant, She could have lodged this FIR denoting some other place and time of occurrence to lend it credibility as suggested by defence. However, the contents of the FIR cannot be branded as false on the face of it. It takes much courage for a woman to impute this kind of allegations against a sitting judicial officer of the District Judge rank. The applicant has himself mentioned the event which took place on 19.12.2020 at about two and half pm saying that he infact asked the name of her husband. This admission indicates that some matter or conversation took place between the two sides at the time of incident which constituted the background for the incident as narrated in FIR, to take place. It is also argued by the D.G.C. (Crl) that if the informant who is one of the staff members was not competent in her work or even if she is supposed to be prone to misbehavior this does not give license to P.O. to misbehave in return. It is also contended that the other staff members said to be present during the court working hours cannot be expected to give a statement against their own P.O. and in favour a class III woman employee. It is also argued that if the accused/applicant is a judicial officer of district judge rank, the informant victim is also a wife of Retd. officer of district judge rank.

(6) I perused the contents of the FIR which appear to be quite serious and highly offensive against the applicant. This fact cannot be ignored as argued by the D.G.C. (Crl.) that it takes a lot of courage for a woman employee to make the imputations of such a serious nature against that very P.O. under whom she has been working.

(7) Admittedly, the applicant moved a criminal misc. anticipatory bail application u/s. 438 Cr.P.C. No. 18713/2021 Kautilya Gaur Vs. State of U.P. which has been rejected by the Hon'ble High Court on 21.12.2021. The relevant extract of the order of the Hon'ble Court is as below-

"It is an application moved, under section 438 Cr.P.C., by applicant Kautilya Gaur, for grant to anticipatory bail, filed straightway before this Court. In view of judgment, passed by the Full Bench of this Court in Criminal Misc. Anticipatory Bail Application U/s. 438 Cr.P.C. No. 1094 of 2020 (Ankit Bharti Vs. State of U.P. and another), some special reason is to be placed before the Court for straightway entertaining application under Section 438 Cr.P.C. Having heard learned counsel for both sides and gone through the material placed on record, there appears to be no special ground for entertaining this anticipatory bail application straightway by this Court."

(8) There is no contention in the application that the applicant apprehended immediate arrest. There is no contention that any time after filing of the FIR, the police visited the officer in connection with his probable arrest, in other words it can be said that no concrete facts as regard his imminent arrest or apprehension thereof have been placed before me. No doubt section 438 Cr.P.C. gives a discretionary power to the courts to grant anticipatory bail in suitable cases depending on a facts and circumstances of each case, however, the discretion is to be exercised on sound grounds. The applicant though has given a version of his own, however, taking into account the gravity and seriousness of the charges, I do not find it fit to grant the benefit of provisions of anticipatory bail.

(9) Hence, the anticipatory bail of applicant is hereby rejected.

Dated: 24.12.2021

Sunil Kumar, Steno

**(Jyotsna Sharma)
Sessions Judge,
Jhansi.**