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DELHI POLICE ACADEMY



SUPREME COURT OF INDIA

ASHA DUBEY..... APPELLANT(S)
VERSUS
THE STATE OF MADHYA PRADESH .....RESPONDENT(S)

No Absolute Bar for Proclaimed Offender to Seek Anticipatory Bail

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CRIMINAL APPEAL NO.4564 OF 2024(@ SLP(CRL.) No.13123/2024

Date of Judgement: 12/11/2024

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Facts of the Case:

The appellant, Asha Dubey, the mother-in-law of the deceased, was accused of offenses punishable under Sections 80, 85, 108, and 3(5) of the Bharatiya Nyaya Sanhita, 2023, and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The prosecution alleged her involvement in the cruelty and harassment of the deceased, alongside her son, who had already been arrested and remained in custody. The appellant, however, contended that she did not reside with the deceased at the relevant time and was only present when her son allegedly ill-treated the deceased. Despite her claim, the appellant was declared a proclaimed offender under Section 82 of the Code of Criminal Procedure (CrPC), 1973 (now 84 BNSS). The appellant approached the Supreme Court seeking anticipatory bail, asserting her willingness to cooperate with the investigation.

Issues Advanced:

1. Whether a declaration under Section 82 of CrPC (Now 84 BNSS) precludes the court from entertaining an application for anticipatory bail?

Judgement:

The Supreme Court comprehensively analyzed the legal principles and facts to arrive at its decision.

1. The court examined the necessity of custodial interrogation and concluded that it was not required in the present case. The appellant had repeatedly expressed her readiness to cooperate, and there was no evidence of deliberate non-compliance or obstruction on her part. Highlighting this, the court stated:

Para 6: The relationship between the appellant and the deceased is not in dispute. Admittedly, the son of the appellant has been arrested and he is still in custody. It is incorrect to state that pursuant to the interim protection granted, the appellant was not cooperating in the investigation and in fact despite communication sent by the appellant to investigating authority, the investigating authority has not called her for joining the investigation.

Para 7: Considering the facts and circumstances of the case, we are of the view that the custodial interrogation of the appellant is not required."

2. The court rejected the contention that the declaration of a proclaimed offender under Section 82 of CrPC (now 84 BNSS) bars the court from considering anticipatory bail. Referring to relevant precedents, the

court clarified that the imposition of such a bar must depend on the specific facts and circumstances of the case. The bench observed:

Para 8: "...In the event of the declaration under Section 82 of the CrPC (Now 84 BNSS), it is not as if in all cases that there will be a total embargo on considering the application for the grant of anticipatory bail."

3. The court emphasized that in cases involving personal liberty, a delicate balance must be maintained. While the state argued that the appellant's status as a proclaimed offender justified her arrest, the court noted that liberty could not be curtailed without adequate justification. The bench ruled as under

Para 9: When the liberty of the appellant is pitted against [the investigation], this Court will have to see the circumstances of the case, nature of the offense, and the background based on which such a proclamation was issued. Suffice it is to state that it is a fit case for grant of anticipatory bail, on the condition that the appellant shall cooperate with the further investigation. However, liberty is also given to the respondents to seek cancellation of bail that has been granted, in the event of a 4 violation of the conditions which are to be imposed by the Trial Court or if there are any perceived threats against the witnesses.

The Supreme Court allowed the appeal, underscoring that anticipatory bail could be granted even to a proclaimed offender, provided the facts and circumstances justified it. The court set aside the High Court's order and granted anticipatory bail to the appellant. It directed that the appellant must cooperate with the investigation and comply with any conditions imposed by the Trial Court.