

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 484 of 2023

Applicant :- Parmanand Mourya

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

Counsel for Applicant :- Arvind Prabodh Dubey

Counsel for Opposite Party :- G.A.,Dheeraj Kumar Singh

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material available on record.
2. Apprehending his arrest, the present anticipatory bail application has been filed on behalf of the applicant Parmanand Mourya in Case Crime No.178 of 2022, under Section 406 I.P.C., Police Station Shahpur, District Gorakhpur with a prayer to enlarge him on anticipatory bail.
3. The prosecution story as narrated in the FIR is that the informant had given Rs. 13 lacs to the present applicant and after the death of the husband of the informant when the said money was demanded by the informant, the applicant refused to pay the same. The FIR was lodged on 28.04.2022 and now charge sheet has been submitted in the matter.
4. It is submitted by learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. He has been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been filed. It is further submitted that the allegations made in the F.I.R. are totally vague. It is further submitted that applicant-accused and husband of the informant were working at the same workplace and during the pandemic Covid-19 when husband of the informant was suffering from Corona, all the arrangements regarding his treatment and medicines were made by the present applicant.
5. It is further submitted that Rs. 5 lacs has already been returned by the applicant in favour of the informant. It is also submitted that

the present applicant had no *mala fide* intention and he was engaged in serving the ailing husband of the informant throughout the Corona period. A copy of WhatsApp chat has also been annexed with affidavit in this regard. It is also submitted that applicant has no criminal history to his credit. He has been co-operative with the investigation of the case throughout and now he is entitled to be on anticipatory bail.

6. *Per contra*, learned A.G.A. opposed the prayer for anticipatory bail and it has been vehemently argued that a huge amount has been transferred in the bank account of the present applicant by the informant and the same has not been paid back by the applicant so far.

7. In the present case, during investigation, notice under Section 41-A Cr.P.C. was given to the applicant and the said liberty was not misused by him. Investigating Officer of this case did not require the custodial interrogation of the applicant throughout the investigation and now after submission of charge sheet, no custodial interrogation seems to be required in this case.

8. Although charge-sheet has been submitted in this matter, but in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the

parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till end of the trial in the matter.

9. The anticipatory bail application is **allowed**.

10. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till end of the trial on his furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The applicant shall make himself available before the court concerned on the date fixed in the matter;

(ii) The applicant 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 / her from disclosing such facts to the Court or to any police officer;

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

11. In case of default of any of the conditions, same may be a ground for cancellation of protection granted to the applicant.

Order Date :- 2.12.2023

Madhurima