

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10402 of 2021

Applicant :- Vivek @ Vivekdeep And 2 Others

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

Counsel for Applicant :- Akhilesh Kumar Mishra

Counsel for Opposite Party :- G.A.

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. The instant anticipatory bail application under Section 438 Code of Criminal Procedure has been filed on behalf of the applicants - **Vivek @ Vivekdeep, Vikki alias Aman Kumar and Mukesh alias Pintu** with a prayer to release them on anticipatory bail in Case Crime No. 55 of 2021, under Sections 147, 148, 323, 504, 506, 307 IPC, Police Station Kaptanganj, District Basti.
3. At the very outset, learned counsel for the applicants submits that he is not pressing the anticipatory bail application in respect of **applicant no.1 Vivek @ Vivekdeep**, as he has already been exonerated. He confines his prayer only to the extent of granting anticipatory bail to the **applicant no.2 Vikki alias Aman Kumar** and **applicant no.3 Mukesh alias Pintu** during the pendency of trial.
4. 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.
5. Learned counsel for the applicants has submitted that the applicants are innocent and have been falsely implicated in this case. Learned counsel for the applicants submits that a compromise has been entered in between the parties. Copy of the same has been annexed as Annexure-3 to the application. The

applicants have definite apprehension that they may be arrested by the police any time.

6. While the bail application has been opposed by learned A.G.A., learned counsel for the applicants submits that the parties are known from before and that a petty scuffle took place between them during Holi celebrations, which was given colour of the present prosecution. Then, it is stated that the parties have resolved their differences and misunderstandings and have submitted a written compromise, signed by both sides (a copy of the same has been annexed with the affidavit in support of the present application).

7. Without expressing any opinion on the merits of the case and considering the nature of accusations, the applicant is entitled to be released on anticipatory bail in this case 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.

8. In the event the applicants - **Vikki alias Aman Kumar** and **Mukesh alias Pintu** are arrested, they shall be released on anticipatory bail till the end trial in the aforesaid case crime number for the aforesaid offences 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:-

(i). The applicants shall not leave India during the pendency of trial without prior permission from the concerned trial Court.

(ii). The applicants shall surrender their passport, if any, to the concerned trial Court forthwith. Their passport will remain in custody of the concerned trial Court.

(iii). 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 from disclosing such facts to the Court or to any police officer;

(iv). The applicants shall file an undertaking to the effect that she 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.

(v). In case the applicants misuse the liberty of bail, the trial 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.

(vi). 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 his bail and proceed against him in accordance with law.

9. This anticipatory bail application is **allowed** accordingly.

Order Date :- 12.12.2023

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