

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11946 of 2023

Applicant :- Santosh Kumar Agrihari And 4 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Faizan Habeeb, Shahabuddin

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicants - **Santosh Kumar Agrihari, Harihar Prasad Agrihari, Dipika, Prem Devi** and **Kavita** seeking anticipatory bail in Case Crime No. 0025 of 2018, under Sections 406, 380, 504, 506 IPC, Police Station Buxa, District Jaunpur.
2. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.
3. It is submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. After completion of investigation, charge sheet has been submitted in the matter. It is further submitted that no article was stolen by the present applicants and as a matter of fact when the police made a raid upon the house of the applicants, no incriminating articles were recovered. It is also submitted that there is no written document regarding the payment of Rupees Six Lakhs by the informant in favour of the applicants. Criminal history of the applicants has been explained sufficiently. It is also submitted that the applicants have been cooperative during investigation. No process under Sections 82 and 83 CrPC has been issued against the applicants and the applicants have not been declared absconder. In case applicants are granted anticipatory bail, they will not misuse the liberty of bail and would obey all conditions of bail.
4. Learned A.G.A. opposed the prayer for anticipatory bail but however could not dispute this factual aspect that there is no written transaction between the parties for the payment of Rupees Six Lakhs by the informant in favour of the applicants.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. In this matter, it reveals from the perusal of the record that the informant was working as labourer in the Electricity Department after death of her husband in dying in harness and during that period she was living as tenant in the house of the applicants and the applicants had taken about Rupees Six Lakhs from the informant by playing fraud. The said money was not repaid to the informant and her household articles and personal belongings were stolen by the applicants and kept in their houses. F.I.R. was lodged and investigation started which culminated into charge sheet. It also reveals from the perusal of the record that after submission of charge sheet no custodial interrogation seems to be required. Applicants have not been declared proclaimed offender. They have been cooperative during investigation.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that 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.

8. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicants till the end of trial.

9. The application is **allowed** accordingly.

10. In the event of arrest of the applicants, they shall be released on anticipatory bail on their 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 applicants shall make themselves available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

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

Order Date :- 1.11.2023

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