

Court No. - 72

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 4578 of 2023**

Applicant :- Abu Zaid

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Bal Ram Bind

Counsel for Opposite Party :- G.A.,Dhananjay Awasthi

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Bal Ram Bind, learned counsel for the applicant, Sri Dhananjay Awasthi, learned counsel for Customs (Preventive) Division and Sri Anit Kumar Shukla, learned A.G.A. for the State as well as perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Complaint Case No.2242 of 2016 (Union of India vs. Nitya Nand Chaubey & Others), under Section 135 of Customs Act, 1962, Police Station Customs Division, District Varanasi, during the pendency of trial.
4. As per prosecution story, Complaint Case No.2242 of 2016 was filed by the Union of India Through Deputy Commissioner Customs, Varanasi before the Court of Special C.J.M. Economic Offences, Varanasi alleging that the co-accused person Nitya Nand Chaubey was arrested with foreign exchange worth Rs.53,32,464/- and he could not give any plausible explanation for possessing such a huge amount of foreign exchange. The applicant is stated to be the proprietor of M/s Gulam Rasool Travells, Main Road Lalganj, Azamgarh.
5. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the present case. He is the proprietor of M/s Gulam Rasool Travells, who holds a franchisee of M/s Ambey Forex Pvt. Ltd., a company registered at Gurdaspur, Punjab. Learned counsel has further stated that the recovery has been made from co-accused person Nitya Nand Chaubey, who was the manager of the company of the applicant. The applicant, being the proprietor, has been held vicariously liable for the acts committed by Nitya Nand Chaubey, if any.

6. Learned counsel for the applicant has further stated that at the time of recovery of the aforesaid amount, the applicant was slapped a fine of Rs.1.5 lakhs, which was set-aside in appeal. A review petition was filed by the Department, which was dismissed. Even an appeal before the G.S.T. Appellate Authority filed by the Department has been dismissed. The applicant has been put to double jeopardy as in addition to the criminal proceedings, civil proceedings are also pending regarding the assessment of the loss incurred by the State.

7. Learned counsel for the applicant has further stated that the applicant is a bonafide person having no criminal antecedents to his credit. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

8. Per contra, learned counsel for the Customs (Preventive) Division has vehemently opposed the anticipatory bail application on the ground that the applicant is the sole proprietor of the said company being run through his manager Nitya Nand Chaubey. The said proprietorship is not from any Government Department. The said company M/s Gulam Rasool Travells does not have any sanction from the RBI or any Union Government Authority for dealing in foreign exchange. Even the certificate, annexed as annexure no.3 to the affidavit filed with the anticipatory bail application, indicates that the franchisee has been taken from a private firm, namely, Ambey Forex Pvt. Ltd. based at Gurdaspur and it has been misspelt as Guradaspur on the left side of the bottom of the certificate.

9. Learned counsel for the Customs (Preventive) Division has further stated that the said recovery of such a heavy amount speaks volume of the forgery and act committed by the applicant and his company by which he has inflicted heavy loss to the State Exchequer, as such he is not entitled for anticipatory bail. He is not co-operating with the Department as he was called several times and has not appeared.

10. In rebuttal, learned counsel for the applicant has stated that he has co-operated completely with the Authorities and has appeared several times and has even contested the matter before the Authorities regarding inflicting of fine only. Learned counsel has further stated that he has mentioned in paragraph 17 of the rejoinder affidavit that he holds a RBI License No. FECG-FFMC093/2006(U) dated 28.04.2006.

11. After hearing learned counsel for the parties and taking into

consideration the fact that the heavy amount of foreign exchange has been recovered from the possession of the manager of the company, to which the applicant is the proprietor, I do not find it a fit case for grant of anticipatory bail to the applicant. The present anticipatory bail application is hereby found devoid of merits and is accordingly **rejected**.

12. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 22.11.2023

Ravi Kant

(Krishan Pahal, J.)