

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 6286 of 2023

Applicant :- Ajay Kumar Gupta @ Guddu And Another

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

Counsel for Applicant :- Chandra Kant Tripathi

Counsel for Opposite Party :- G.A.,Arya Suman Pandey,Avnish Kumar Rai

Hon'ble Nalin Kumar Srivastava,J.

1. Rejoinder affidavit filed today by learned counsel for the applicants is taken on record.
2. Heard learned counsel for the applicants, learned AGA and perused the material available on record.
3. This application for anticipatory bail has been filed by applicants- **Ajay Kumar Gupta @ Guddu & Amit Kumar** in connection with Case Crime No. 0189 of 2022, under sections 406, 504, 506 IPC, Police Station Bhanwarkol, District Ghazipur.
4. It has been 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 investigation charge sheet has been submitted in the matter. In case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.
5. It is further submitted that the parties are engaged in business transactions for a long time and it was not necessary for the parties to enter upon a written cash transfer. It has been admitted in the counter affidavit as well that the parties have been engaged in the business transaction for a long period of time and they were not bound to make transaction between them through any banking mode at every occasion. It has been admitted in the counter affidavit that some amount between them was exchanged on the basis of trust. It has been further submitted by learned counsel for the applicant that paddy valuing Rs.16 lakhs was already handed over to the informant but the payment of the same was not made to him by the applicants. It is next submitted that earlier, an interim

anticipatory bail was granted to the accused applicants by this Court vide order dated 30.05.2023 and the same has not been misused by them.

6. Learned A.G.A. and learned counsel for the informant have opposed the prayer for anticipatory bail.

7. It appears from the perusal of the record that dispute between the parties is relating to business transactions. As per allegations made by the informant Rs.6 lakhs through bank transaction and Rs. 5 lakhs as cash were given to the applicants but they did not provide paddy as agreed upon between the parties.

8. In the present case, the dispute relates to a business transaction and is of civil nature. No custodial interrogation is required in this matter after submission of the charge sheet. It also appears that the offences levelled against the applicants are punishable with the imprisonment for a maximum period of seven years.

9. Although the 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.

10. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants 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 applicants till conclusion of trial in the matter.

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

12. In the event of arrest of the applicants in the aforesaid case crime, 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 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(ii) The applicants shall not pressurize/ intimidate the prosecution witness.

(iii) The applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

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

13. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicants in accordance with law.

Order Date :- 16.10.2023

Shivangi