

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 6619 of 2023

Applicant :- Ramkhelawan

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

Counsel for Applicant :- Pranav Tiwary, Atharva Dixit, Sr.
Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Counter and rejoinder affidavits have been exchanged between the parties.
2. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant - **Ramkhelawan** in Case Crime No.75 of 2023, under Section 409 IPC, Police Station - Asothar, District - Fatehpur.
3. Heard Sri Atharva Dixit, learned counsel for the applicant as well as learned A.G.A. for the State.
4. A shortfall of grains was found at the Govt. Purchase Centre. The F.I.R. was lodged on 6.5.2023 against named accused Abhayraj Patel, Mandi Sahayak and Incharge of Purchase Centre and the present accused applicant as Incharge Secretary, Mandi Samiti. Investigation started, which is still going on.
5. During the course of argument, learned counsel for the applicant has vehemently submitted that the alleged offence does not fall within the purview of duty and work allotted to the present applicant and as such, he was not responsible for the alleged shortfall of the grains at the Govt. Purchase Centre. No liability has been fixed so far in respect of alleged shortfall of the grains. It is further submitted that vide order dated 12.7.2023, the applicant has been granted interim anticipatory bail by this Court and he has not misused the interim protection granted to him. It is further submitted that no prima facie case is made out against the applicant. No custodial interrogation is required from the applicant. He has been cooperative with the investigation so far, which is still pending. There is no chance of fleeing away of the applicant.

6. Learned A.G.A. opposed the prayer for anticipatory bail.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

9. 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 the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

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

11. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House

Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(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 office.

(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.

12. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 7.11.2023

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