

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 7216 of 2023

Applicant :- Nitesh Kumar

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

Counsel for Applicant :- Dushyant Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Dushyant Kumar, learned counsel for the applicant, Sri R.P. Patel, learned A.G.A. for the State and perused the material placed on record.
3. The present application for anticipatory bail has been filed for anticipatory bail in Case Crime No.78 of 2020, under Sections 409, 467, 468, 471, 120-B I.P.C., Police Station- Bhojpur, District- Moradabad, during the pendency of trial.
4. This is the second anticipatory bail application on behalf of the applicant. The first anticipatory bail application was disposed of vide order dated 20.9.2022 by this Court and the following orders were passed:-

"Heard learned counsel for applicant and Smt. Ladli Pandey, learned A.G.A. for State.

The present application for anticipatory bail has been filed for protection in regard to Case Crime No. 78 of 2020, under sections 420, 406 I.P.C., P.S. Bhojpur, district Moradabad.

After arguing for some time, applicant's counsel submits that the present application for anticipatory bail may be dismissed as withdrawn with liberty to file a regular bail application which may be decided keeping in view the guidelines as laid down by the Apex Court in the case of Satender Kumar Antil vs. Central Bureau of Investigation and another, reported in 2022 SCC OnLine SC 825.

Learned A.G.A. has no objection to the prayer of learned counsel for the applicant.

In view of the above, considering the aforesaid alternative prayer made by learned counsel for the applicant, it is directed that the applicant shall surrender before the concerned court below within four weeks from today and in case a regular bail application is filed, the same be decided in view of the law laid by Supreme Court in the case of Satender Kumar Antil

(supra).

For the period of four weeks from today or till the time of surrender of the applicant before the concerned court below, whichever is earlier, no coercive action shall be taken against the applicant- Nitesh Kumar in the above case.

With the above observations and directions, this application is disposed of."

5. As a fresh ground, learned counsel for the applicant has stated that the said application was disposed of under Sections 420, 406 I.P.C. only, and subsequent to it, as per the report submitted by the Investigating Officer before the A.C.J.M.-I, Moradabad the investigation against the applicant is pending in added Sections 409, 467, 468, 471 and 120-B I.P.C. as well. Learned counsel has stated that as a new ground the applicant was already suspended on the date of lodging of FIR. The applicant was suspended on 19.12.2016 and the said suspension order has been revoked vide order dated 18.9.2019. Learned counsel has stated that despite the said revocation order the applicant has not been reinstated and given the charge by the department. The applicant has to face double jeopardy as on one side he has not been provided the payment of his dues and on the other side the police is after him.

6. Learned counsel for the applicant has further stated that the criminal history of two cases of the applicant stands explained as in one case the closure report has been filed and accepted and in the other case under Section 408 I.P.C. the applicant has been granted opportunity under Section 41-A Cr.P.C., which has been complied with by him. 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.

7. Per contra, learned AGA has vehemently opposed the anticipatory bail application and stated that the criminal history of the applicant does not stand explained as the bail order in either of the cases has not been filed. Learned A.G.A. has further stated that the second anticipatory bail application is also barred by the fact that the previous application was withdrawn by the applicant seeking protection as provided by the Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and another** reported in **2022 SCC OnLine SC 825**. The said grounds mentioned today were also present at the time of adjudication of previous anticipatory bail application. This act of applicant tantamounts to forum shopping.

8. After taking into consideration the rival contentions and the fact that no new ground is there and the arguments tendered by learned counsel for the applicant pertain to regular bail, I do not find it a fit case for grant of anticipatory bail to the applicant.

9. The present anticipatory bail application is hereby found devoid of merits and is accordingly **rejected**.

10. 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 :- 12.10.2023

Vikas

[Krishan Pahal, J.]