

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 8953 of 2023

Applicant :- Radha Mohan Dwivedi

Opposite Party :- State of U.P.

Counsel for Applicant :- Aditya Bhushan Singhal

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Mr. Aditya Bhushan Singhal, learned counsel for the applicant and learned Additional Government Advocate for the State.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case No.6362 of 1998 arising out of Case Crime No.380 of 1995, under Sections 342, 343, 218, 220, 120-B, 506, 467, 468, 471 IPC and 25/4 Arms Act, Police Station Nai Mandi, District Muzaffarnagar.

3. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case just to harass the applicant in fact no such incident has taken place as alleged in the impugned FIR. The applicant has never committed any offence as alleged in the impugned FIR. The applicant is aged about 64 years and retired from the police department on 31st October, 2019. As per allegation, a complaint was lodged by the police against one Balendra @ Bali being Case Crime No.150 of 1995 and the investigation was conducted by sub-inspector Malkhan Singh and later on the matter was transferred to CBCID, Meerut. The said accused Balendra @ Bali was arrested by the police of police station Nai Mandi, Muzaffarnagar and not by the applicant because at that time, the applicant was posted at Police Station Civil Lines, Muzaffarnagar, thereafter, the present FIR has been lodged against the applicant and five other accused persons on 02.11.1995 under the aforesaid sections. Learned counsel for the applicant submits that Balendra @ Bali is having long criminal history and the applicant was deliberately implicated by Balendra @ Bali, who was arrested by the police on 21.05.1995, thereafter, the brother of Balendra @ Bali filed Habeas Corpus Petition before Hon'ble Apex Court in respect of illegal detention of Balendra @ Bali in which notices were directed to be issued to the opposite parties on

22.05.1995 whereas the accused Balendra @ Bali was surrendered before the learned Chief Judicial Magistrate, Muzaffarnagar and was bailed out by the CJM concerned on 23.05.1995 and subsequently the Hon'ble Supreme Court vide order dated 11.08.1995 issued a direction to DGP, U.P. to inquire into the matter by an officer of CBCID not below the rank of S.P. but the fact that accused has already surrendered before the CJM concerned has not been disclosed before Hon'ble Supreme Court.

4. Learned counsel for the applicant further submits that in the instant matter the investigation was conducted by CBCID, who filed charge sheet against the applicant and 5 others accused persons on 26.09.1998 and the court below has taken cognizance and summoned the accused persons including the applicant but summons as were not served upon the applicant because at that time the applicant was posted at Police Station Civil Lines, Kanpur Dehat. No notice under Sections 82 and 83 Cr.P.C. were also served upon the applicant because at that time the applicant was posted at different places and when the applicant got the knowledge of the proceedings of the present case, he immediately moved the anticipatory bail application before the court below.

5. In support of his submission, learned counsel for the applicant has placed reliance in the case of **Lavesh vs. State (NCT of Delhi) (2012) 8 SCC 730** wherein the Court has specifically used the word 'normally' and has observed that normally when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail but in the present case no summons and process under Sections 82 and 83 Cr.P.C. were served upon the applicant, hence, there is no question of absconding of the applicant.

6. Learned A.G.A. has vehemently opposed the prayer for anticipatory bail of the applicant and has admitted that summons as well as notice regarding proceeding under Section 82 and 83 Cr.P.C. have not been served upon the applicant.

7. In paragraph 3 of the counter affidavit filed on behalf of State, it is stated that due to non availability of police personnel in police station as the police personnel were occupied in farmer agitation in order to maintain law and order, the non bailable warrant with process of Sections 82 and 83 Cr.P.C. could not be served upon the applicant.

8. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of

applicant, he is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98***. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

9. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant-**Radha Mohan Dwivedi**, involved in the aforesaid case crime be released on anticipatory bail till conclusion of trial on furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(i) 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 from disclosing such facts to the Court or to any police officer.

(ii) The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(iii) The applicant shall surrender his passport, if any, to the concerned Court forthwith. His passport will remain in custody of the concerned Court.

(iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

(v) In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98***.

(vi) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

10. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

11. Court below is also directed to conclude the trial of the

aforesaid case, expeditiously, preferably within a period of six months from the date of production of certified copy of this Court.

12. With the aforesaid observations/ directions, the application is **disposed of.**

Order Date :- 18.10.2023

Ajeet