

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 8936 of 2023

Applicant :- Rakesh Narain Dwivedi

Opposite Party :- State of U.P.

Counsel for Applicant :- Vimlendu Tripathi

Counsel for Opposite Party :- G.A.,Uma Nath Pandey

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Mr. Vimlendu Tripathi, learned counsel for the applicant, learned Additional Government Advocate for the State and Mr. Uma Nath Pandey, learned counsel for the informant.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.198 of 2017, under Sections 420, 467, 468, 471 IPC, Police Station Ekdil, District Etawah.

3. The matter relates to Committee of Management and preparation of fake lists as well as fake documents relating to fake committee of management.

4. 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 67 years and is suffering from serious liver disease. The applicant is a retired officiating principal of Shri Gyanchandra Vaidh Inter College, Ekdil. The applicant was appointed as an Assistant Teacher in the year 1976 and was promoted from time to time. On 01.07.2015, the applicant was appointed as officiating principal of the said college on account of seniority. He further submits that the entire land of the society area measuring approx 40 bighas was the property of founder Late Gyan Chandra Vaidhy, who had donated the same to establish the society. In the year 2013-14, the Government acquired some of the college's land to construct the National Highway for which a total sum of Rs.92,86,000/- was received as land compensation by the college's management committee, thereafter, a committee was constituted by the informant in the year 2014-15 for construction of building but the

informant manager withdrew the entire amount of the land compensation fund through cheque. Other financial irregularities were also committed to which applicant raised serious objections, as a result, applicant was removed from the constructions committee by replacing Mr. Raj Kishore Assistant Teacher. Since the applicant raised objection against the irregularities committed by the informant, the informant was annoyed and he managed to get some frivolous complaint by creating false context of complaint and ultimately the applicant was suspended on 04.01.2016, which was approved by the DIOS vide order dated 29.1.2016, thereafter, on 21.02.2016 the applicant was dismissed from service. Being aggrieved, the applicant preferred special appeal no.275 of 2016 and this Court directed the applicant to join his services. He further submits that the applicant has no concern with the alleged irregularity even the applicant did not perform any act in connection with the management/election dispute and being inimical to the applicant, the informant included the name of the applicant in the instant case.

5. Learned counsel for the applicant further submits that earlier the informant has also filed an application under Section 156 (3) Cr.P.C. on the same set of facts, as narrated in the present case, which was rejected vide order dated 29.08.2016. Later on, on the same set of facts, the present FIR has been lodged. He further submits that after registration of impugned FIR, the investigating officer has submitted final report. Being aggrieved, the informant has filed protest petition and the court below in a routine manner relying upon the contents of the protest petition, has illegally summoned the applicant to face trial. He further submits that no offence whatsoever in any manner is made out against the applicant, hence, the court below while passing the summoning order has committed manifest error. The entire record of the case would itself shows that the court below without satisfying as to whether summons issued against the applicant were served upon him or not, straightaway issued non bailable warrant against the applicant. The applicant is having no previous criminal history as has been mentioned in paragraph 50 of the affidavit. He further submits that applicant has apprehension of imminent arrest and in case, the applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

6. Lastly, it has been argued that the matter relates to Committee of Management whereby two rival groups claiming for truthiness of their existence.

7. Learned A.G.A. as well as learned counsel for the informant

vehemently opposed the prayer for anticipatory bail of the applicant but could not dispute the aforesaid contentions raised by learned counsel for 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-**Rakesh Narain 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 co-operate in the trial and in case the applicant is not cooperated in the trial, it shall be open for the trial court to initiate coercive steps against the applicant.

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

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

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

(v) 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.

(vi) 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***.

(vii) 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. With the aforesaid observations/ directions, the application is **disposed of.**

Order Date :- 7.12.2023

Ajeet