

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9499 of 2023

Applicant :- Gayatri Devi

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Misra, Ayush Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant Gayatri Devi seeking anticipatory bail in Case Crime No. 181 of 2023, under Sections 406, 420 IPC, Police Station - Naugavan Sadat, District- Amroha.
3. The labour charge which was sanctioned by the government to be distributed amongst labourers was given to them but after some unreasonable deduction by the present applicant, who happens to be the proprietor of M/S Hindustan Security Company, Moradabad having registered office at Govind Nagar, Saraswati Vihar, Moradabad and in this way a huge amount of public fund amounting to Rs.13,30,192/- was misappropriated by the present applicant. FIR was lodged on 22.4.2023 and now the charge sheet has been submitted after investigation.
4. It has been submitted by the learned counsel for the applicant that applicant is innocent and she has apprehension of her arrest in the above-mentioned case, whereas there is no credible evidence against her. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been filed and cognizance has been taken by the Court concerned. It is further submitted that as a proprietor of the company, the applicant has been running the same for a long span of time but no complaint was ever made against her in respect of embezzlement of public exchequer or less payment of labour charge. Due to some misunderstanding the present FIR has been lodged against her. It is further submitted that it is totally wrong to say that the applicant did not deposit the EPF and ESIC accruing towards the labourers working through her but the fact is that she never usurped the

same. It is further submitted that the applicant has been supportive throughout the investigation. It is also submitted that as EPF and ESIC an amount of more than Rs.6,01,623/- has already been paid by the applicant, which has been accepted by Nagar Palika concerned. It is further submitted that the dispute relates to civil nature. The applicant has no criminal history to her credit and she is entitled for anticipatory bail. It has been submitted that in case applicant is granted anticipatory bail, she will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It is vehemently submitted that several sweepers have stated before the I.O. in their statement under Section 161 Cr.P.C. that the company of the present applicant has usurped their salary, which is still due to the company. It is further submitted that during investigation a notice under Section 41-A Cr.P.C. was given to the applicant but now charge sheet has been submitted and ample evidence has been collected by the I.O. against the present applicant.

6. In this matter, it reveals that after completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned. 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.

7. 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.

8. 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.

9. In view of the law laid down by the Hon'ble Apex Court, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

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

11. In the last, learned counsel for the applicant has urged that direction be given to the learned Court concerned to consider and decide the bail application of the applicant in terms of the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825***.

12. Hence, it is observed that the bail application of the applicants, if moved, shall be considered and decided by the Court concerned in terms of the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil case*** (supra).

13. It is further directed that the Court concerned while considering the bail application of the applicant in the light of ***Satender Kumar Antil*** case (supra), shall pass an order strictly in compliance of the directions given in the aforesaid judgement by the Hon'ble Supreme Court, in letter and spirit, particularly complying with the order dated 21.3.2023 of the Hon'ble Apex Court in the aforesaid matter.

Order Date :- 28.11.2023

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