

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10229 of 2023

Applicant :- Vinay Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Deepak Kumar Yadav

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 **Vinay Kumar** seeking anticipatory bail in Case Crime No. 161 of 2021, under Sections 420, 467, 468, 471, 120-B, 34 IPC and Section 60, 63, 72 Excise Act, Police Station- Jansa, District-Varanasi.

3. Illegal liquor was smuggled by named co-accused persons Sandip Gaurav and Babu Khan in the pick no. UP13BT4872 and the present applicant is said to be the owner of the said vehicle. The said liquor was retrieved by the police and it was found that the illegal liquor was being transported from Haryana to Bihar and the bilty produced by the co-accused persons on spot was found forged by police. A huge quantity of illegal liquor was recovered. FIR was lodged on 9.9.2021 and investigation started, which is going on.

4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further submitted that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It is further submitted that the applicant is not the owner of the said vehicle and the vehicle was sold by him in the year 2019 in favour of one Raju Bhati but inadvertently the name of Raju Bhati was not transferred in the RTO records. It is further submitted that the applicant has absolutely no concern with the pick up vehicle. It is also submitted that he has no knowledge at all that the illegal liquor was being transported by the aforesaid vehicle. It is also submitted that the applicant has no criminal history to his credit and he is cooperating with the investigation of the case. It is lastly submitted that in case applicant is granted anticipatory bail, he

shall 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 submitted that co-accused Sandeep Gaurav and Babu Khan were granted regular bail by this Court and no anticipatory bail was granted to the co-accused persons. It is further submitted that as per RTO records the applicant is the registered owner of the pick up vehicle, whereby the illegal liquor was being transported. The present applicant is the master mind of the whole crime as such he is not entitled for anticipatory bail.

6. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled 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.

7. Hence, 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, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

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

Order Date :- 13.10.2023

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