

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9714 of 2023**

Applicant :- Sonu

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Jagdish

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. Supplementary affidavit filed today is taken on record.

2. This application has been moved on behalf of the applicant Sonu seeking anticipatory bail in Case Crime No. 260 of 2019 under Sections 307 IPC, Police Station Gangoh, District-Saharanpur.

3. A police encounter took place wherein the accused persons opened fire upon the police party with intention to kill but however no injury was caused to any police man and co-accused Fazil and Mohsin were arrested on spot and on the basis of their confessional statement the name of present applicant came into light.

4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. After completion of investigation charge-sheet has been filed and cognizance has been taken by the Court concerned. It is further submitted that it is a no injury case. Although the applicant is named in the FIR but his name has come on the surface on the basis of the confessional statement of co-accused persons made in the police custody. It is further submitted that the applicant has been cooperative with the I.O. during investigation. It is also submitted that the criminal history of the applicant has been properly explained. It is also submitted that in Cr. Misc. Anticipatory Bail Application No. 36007 of 2023, the anticipatory bail was granted to the applicant by this Court till submission of the police report under Section 173 (2) Cr.P.C. vide order dated 18.9.2019 and the said liberty was not misused by him. It has been submitted that in case applicant is granted anticipatory bail, he 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 submitted that since the applicant was not cooperating with the investigation of this case, punitive process under Section 82 Cr.P.C. was issued against him under the instructions of this Court on 17.7.2019 and it was pasted as well on the conspicuous place of his house on 24.8.2019. It is further submitted that the accused applicant was a proclaimed offender before submission of charge sheet but this material fact was suppressed while moving anticipatory bail application before this Court during investigation. It is further submitted that in view of the Hon'ble Apex Court in *State of Haryana vs. Dharamraj*, 2023 SCC Online SC 1085, decided on 29.8.2023, the present application is not maintainable and the applicant is not entitled for any relief.

6. It reflects from the perusal of the record that Cr. Misc. Anticipatory Bail Application No. 36007 of 2023 had been moved by the applicant during investigation before this Court and relief was also granted to him till submission of the police report under Section 173 (2) Cr.P.C. but as a matter of fact prior to the passing of the aforesaid order the accused applicant had already been declared a proclaimed offender and process under Section 82 Cr.P.C. was issued against him. This material fact was suppressed from this Court when anticipatory bail application was moved by the accused during investigation and thereby obtaining a relief from this Court. It is further submitted that the charge sheet in this matter was submitted on 3.10.2019 and the cognizance has been taken by the Court on 20.12.2019 but after submission of charge sheet again the accused did not cooperate with the trial Court and remained absconding and non-bailable warrants were issued against him. Hence, it is absolutely clear from perusal of the record that the first anticipatory bail order 18.9.2019 was obtained by the applicant by concealing the material fact of his abscondance during investigation and the litigant/ accused who does not come before the Court with clean hands is never entitled for any assistance from the Court.

7. In **Dalip Singh vs. State of Uttar Pradesh, (2010) 2 SCC 114** and **Kishore Samrite vs. State of U.P., (2013) 2 SCC 398**, it has been clarified that a party who approaches the court by suppressing the facts and to mislead the Court is not entitled to be heard on merits and that it is a bounden duty of anyone approaching the Courts to state the whole case fully and fairly and any attempt to mislead and approach with unclean hands should be dealt with severely.

8. In **Prestige Lights Ltd., v. State Bank of India, (2007) 8 SCC 449**, the Hon'ble Apex Court impressed upon that if the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter.

9. In **Arunima Baruah v. Union of India, (2007) 6 SCC 120**, the Hon'ble Supreme court has held that it is trite law that to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. Material fact would mean material for the purpose of determination of the lis. It was further held that it is also a trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands.

10. In **Amar Singh v Union of India and others, (2010) 2 SCC 114**, the Hon'ble Apex Court observed that Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts, such litigants who have come with ? unclean hands? are not entitled to be heard on the merits of their case.

11. 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. The unfair conduct of the applicant itself negates his claim for grant of anticipatory bail. Hence, prayer made in the application is refused.

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

Order Date :- 22.11.2023

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