

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 9606 of 2023

Applicant :- Horilal And 6 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Anil Kumar

Counsel for Opposite Party :- G.A., Narayan Singh(Kushwaha)

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affidavit filed on behalf of applicants in the Court today is taken on record.
2. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the material available on record.
3. This application for anticipatory bail has been filed by applicants - **Horilal, Shripal, Roshanlal, Geetam Singh, Hemraj, Tej Singh and Smt. Maya Devi** in connection with Case Crime No.248 of 2016, under Sections 419, 420, 467, 468 and 471 I.P.C., P.S. Patiyali, district-Kasganj.
4. As per first information report the share of the informant in a particular plot was sold by the applicants through a sale deed. They enjoyed the consideration amount and the informant was also dispossessed from his property. F.I.R. was lodged and after investigation chargesheet has been submitted against the applicants.
5. It is submitted by the learned counsel for the applicants that the applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against them. They have been falsely implicated into this matter. 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 into the matter. He next submits that applicants never sold the share of the informant in the property. They are also share holders in the property in question and the sale deed has been executed to the extent of their share only. He further submits that earlier applicants had approached

this Court by filing Criminal Misc. Application U/s 482 Cr.P.C. No. 8485 of 2018 and stay order was passed therein but however, after 19.4.2022 no stay extension order was passed by this Court. However the stay application is still pending. He also submits that matter relates to civil nature dispute. He further submits that trial court despite pendency of the application U/s 482 Cr.P.C. decided the matter following the dictum of *Asian Resurfacing of Road Agency Pvt., Ltd and Anr. vs. Central Bureau of Investigation* on 20.7.2023, while no stay order was operative in favour of the applicants. It is further submitted that the applicants have been cooperative during the course of investigation. It is further submitted that no custodial interrogation is required in this matter from the applicant as the offences alleged against the applicant are punishable with the imprisonment upto a maximum period of seven years. It is further submitted that the applicants have no criminal history to their credit. In case the applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

6. On the other hand, learned A.G.A. has vehemently opposed the prayer for anticipatory bail and submitted that with a fraudulent intention the property of the informant was sold by the applicants and they have made full gain in their favour.

7. Although charge-sheet has been submitted in the present matter, but in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

8. 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.

9. 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.

10. Hence, considering the settled principles of law regarding anticipatory bail, considering that the dispute prima facie relates to civil nature, submissions of the learned counsel for the parties, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicants till end of the trial in the matter.

11. The anticipatory bail application is **allowed**.

12. In the event of arrest of the applicants in the aforesaid case crime, they shall be released on anticipatory bail till end of the trial on their furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The applicants shall make themselves available before the court concerned on the date fixed in the matter;

(ii) The applicants 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 / her from disclosing such facts to the Court or to any police officer;

(iii) The applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

13. In case of default of any of the conditions, same may be a ground for cancellation of protection granted to the applicants.

Order Date :- 27.10.2023

Faridul