

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9837 of 2023

Applicant :- Anil Kumar And Another

Opposite Party :- State Of U.P.And 2 Others

Counsel for Applicant :- Vinod Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicants, 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 applicants **1. Anil Kumar 2. Sunil Kumar** seeking anticipatory bail in Case Crime No. 1523 of 2020, under Sections 406, 420, 506 IPC, Police Station- Indirapuram, District- Ghaziabad.

3. An agreement to sale took place between the parties, who are the property dealers and the informant and other persons and a sum of Rs. 94,50,000/- was paid through cheque and RTGS to the present applicants. Subsequently when vendees were not prepared for the execution of the sale deed the property in question was sold to some other person by the applicants and when the money was demanded back, cheques to a tune of Rs.94,50,000/- were given to the informant but the same were dishonored by the bank. For this fraudulent act of applicants an FIR was lodged on 24.8.2020 and now after investigation charge sheet has been submitted.

4. It has been submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants 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 during investigation the present applicants were not arrested by the I.O. and they did not misuse the said liberty. It is further submitted that it is wrong to say that the cheques amounting to Rs.94,50,000/- given by the applicants to the informant were dishonored by the bank but as a matter of fact through RTGS Rs. 58,38,500/- were paid by the

applicants in favour of the informant. It is further submitted that the applicants have no criminal history to their credit and they are entitled for anticipatory bail. It has been submitted that in case applicants are granted anticipatory bail, they 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 even if it is admitted that Rs.58,38,500/- were paid by the applicants in favour of the informant and the rest amount of about 35 lacs is still due against the applicants. They deliberately issued cheques in favour of the informant whereas they were fully aware of the fact the aforesaid cheques were bound to be dishonored by the bank for insufficiency of funds in the bank account. It is further submitted that in this way still about a sum of Rs. 45 lacs has been usurped and misappropriated by the applicants and they are answerable for the same.

6. In the facts and circumstances, and also keeping in view that by playing fraud a sum of about Rs.45 lacs has been misappropriated by the applicant. During investigation ample evidence has been collected by the I.O. against the present applicants.

7. Although the charge sheet has been submitted in this 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 controversy finally by holding 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. 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. Such a person, who does not cooperate in the matter, is not entitled for any relief from this Court by way of granting anticipatory bail. Prayer made in the application is refused.

11. The anticipatory bail application is rejected.

12. In the last, learned counsel for the applicants has urged that direction be given to the learned Court concerned to consider and decide the bail application of the applicants 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.***

13. 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).

14. It is further directed that the Court concerned while considering the bail application of the applicants 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 :- 30.11.2023

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