

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9910 of 2023**

1. Applicant :- Asif

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

Counsel for Applicant :- Jahangir Haider

Counsel for Opposite Party :- G.A.,Akhilesh Tripathi

**2. Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9830 of 2023**

Applicant :- Zafar Malik

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

Counsel for Applicant :- Jahangir Haider

Counsel for Opposite Party :- G.A.,Akhilesh Tripathi

Hon'ble Nalin Kumar Srivastava,J.

1. Since these anticipatory bail applications arise out of same case crime number, they have been heard together and are being decided by a common order. Criminal Misc. Anticipatory Bail Application No. 9910 of 2023 is being treated as a leading case.

2. These applications have been moved on behalf of the applicants **Asif** and **Zafar Malik** seeking anticipatory bail in Case Crime No. 181 of 2023, under Sections 328, 383, 420, 504, 506, 120-B IPC, P.S. Kotwali, District Ghaziabad.

3. Heard learned counsel for the applicants, learned counsel for the informant as well as the learned A.G.A. for the State and perused the record.

4. It is submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. It is further submitted that the applicants are not the beneficiary of the gift deed and they are only marginal witnesses of the same. The prosecution story is highly improbable as to how the informant appeared before the Sub-Registrar in an unconscious state of mind for the registration of the sale-deed. It is also submitted that the informant was not brought by the present

applicants to the Registry office for registration of the gift deed. It is further submitted that benefit, if any, of the gift deed has been obtained by main accused Rukaiya Malik, who happens to be the wife of the informant. It is a case of family dispute between the informant and the co-accused Rukaiya Malik. Present applicants have been falsely implicated in this case. The investigation of the case is going-on they have been cooperative in the investigation so far. It has been submitted that in case applicants are granted anticipatory bail, they will not misuse the liberty of bail and will co-operate in the investigation and would obey all conditions of bail.

5. Learned A.G.A. and learned counsel for the informant have opposed the prayer for anticipatory bail and submitted that present applicants completely in collusion with the main accused Rukaiya Malik were participating in commission of the alleged crime of administering intoxicant to the informant of the case. They have also gained monetary benefits in the matter.

6. I have considered the rival submissions made by the learned counsel for the parties.

7. From the perusal of the record it reveals that informant of this case was fraudulently administered some intoxicating substance and after keeping him in an unconscious state of mind a registered gift deed of the share of his property was procured by his wife, Rukaiya Malik and the present applicants appeared as witnesses in the said gift deed. F.I.R. was lodged and investigation started, which is still going on. It also reveals that the gift deed has not been executed in favour of the present applicants. They are said to be witnesses of the said gift deed and as per the instrument of gift deed, no monetary benefit has been given to them. Investigation of the case is going on and they are cooperating with the same so far.

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

9. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

10. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicants till filing of police report under Section 173(2) CrPC before the Competent Court.

11. The applications are **allowed** accordingly.

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

1. The applicants shall make themselves available for interrogation by a police officer as and when required.

2. 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 them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

3. The applicants shall not pressurize/ intimidate the prosecution witness.

4. The applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

5. 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 breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of applicants in accordance with law.

Order Date :- 12.10.2023

safi