

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9905 of 2023

Applicant :- Shivam @ Kallu

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Bahadur Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant - **Shivam @ Kallu** seeking anticipatory bail in Case Crime No. 37 of 2023, under Sections 188, 448, 457, 120-B IPC and 3 Prevention of Damage to Public Property Act, Police Station Sipri Bazar, District Jhansi.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. It is further submitted that the applicant has no criminal history to his credit. After completion of investigation, charge sheet has been submitted in the matter and the applicant has been cooperative during course of investigation. It is vehemently submitted that the applicant is a disabled person and he is suffering from 70% of disability and the medical certificate to this effect issued by the Chief Medical Officer, Jhansi has also been annexed with the affidavit. It is also submitted that due to animosity the applicant has been falsely implicated in this case. No process under Sections 82 and 83 CrPC has been issued against the applicant and the applicant has not been declared absconder. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail but could not dispute the factum of disability certificate submitted by the applicant.

5. I have considered the rival submissions made by the learned

counsel for the parties.

6. From of the perusal of the record it reveals that the lock of the house of one Yashpal, which was sealed by the executive authorities while proceeding under Section 14 Gangsters and Anti-Social Activities (Prevention) Act was broken and one Yashwant was held on the spot. F.I.R. was held and investigation started and now charge sheet has been submitted. It also reveals that the applicant has been cooperative during course of investigation. Applicant is a disabled person and is suffering from 70% of disability.

7. Though charge sheet has been submitted in the matter yet 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.

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.

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.

8. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant 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 applicant till the end of trial.

9. The application is **allowed** accordingly.

10. In the event of arrest of the applicant, he shall be released on anticipatory bail on his 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 applicant shall make himself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) The applicant 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 office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

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

Order Date :- 12.10.2023

safi