

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9872 of 2023

Applicant :- Chandra Kant Dwivedi

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

Counsel for Applicant :- Divyanshu Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicant- **Chandra Kant Dwivedi** in connection with Case Crime No. 122 of 2021 under sections 409, 420, 511 IPC, P.S. Robertsganj, District- Sonbhadra.

3. The prosecution story as unfolded in the FIR is that the present applicant who was working as an accountant in Vikas Khand Robertsganj in collusion with the other co-accused persons made embezzlement of public funds and thereby caused monetary loss to the government. FIR was lodged on 15.3.2021 and after investigation now the charge sheet has been submitted.

4. It has been 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. Charge sheet in the matter has been submitted. It is further submitted that from the perusal of the FIR it reflects that the main accused in this matter was Tejbhan Singh, Deputy Labour Commissioner but the I.O. of the case in collusion with him exonerated his name during investigation, who was the master mind of the whole fraud and charge sheet against the present applicant has been submitted only for

making an attempt to embezzle the government funds. It is also submitted that the applicant was working only as an accountant and he has absolutely no role in the alleged embezzlement of public funds. It is also submitted that the applicant was not empowered to pass an order for release of funds and only due to the departmental animosity he was implicated falsely in this case. In fact the I.O. collected evidence during investigation that as per departmental record no duplicacy/payment in the release of funds has taken place in this matter. It is further submitted that no wrongful gain has been made in his favour by the present applicant and he never committed an offence of criminal breach of trust. No money as embezzled amount has been deposited in the bank account of the present applicant. The applicant was duty bound to work as per the instructions of his officers and he only performed his official duties. It is further submitted that earlier Anticipatory Bail Application No. 11553 of 2021 was moved by the applicant along with the other co-accused Rakesh Singh but the same was dismissed for want of prosecution by this Court vide order dated 8.9.2022 and the recall application was also dismissed as withdrawn vide order dated 24.4.2023. The applicant has no criminal history to his credit. It is also submitted that during the course of investigation the applicant has been cooperative and now after submission of the charge sheet no custodial interrogation is required. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. has opposed the prayer for anticipatory bail. It has been submitted that while working as an accountant in Vikas Khand Robertsganj the present applicant was fully involved in the commission of crime of embezzlement of public exchequer and after collecting sufficient evidence charge sheet has been submitted against him, as such he is not entitled for anticipatory bail.

6. It reveals from the perusal of the record that no process under Section 82/83 Cr.P.C. has been issued against the applicant till date and he has cooperated

during the investigation.

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 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, submissions of the learned counsel for the parties, nature of accusation, role of applicant 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 applicant till conclusion of trial in the matter.

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

12. In the event of arrest of the applicant in the aforesaid case crime, 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 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence.
- ii. The applicant shall not pressurize/ intimidate the prosecution witness.
- iii. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- iv. The applicant shall not leave India without prior permission of the Court and if he has passport, the same shall be deposited by her 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 the applicant in accordance with law.

Order Date :- 12.10.2023//Fhd