

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9983 of 2023

Applicant :- Prakash Devi And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicants, learned AGA and perused the material available on record. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. This application for anticipatory bail has been filed by applicants- **1. Prakash Devi, 2. Satyapal** in connection with Case Crime No. 427 of 2009 under sections 420, 467, 468, 471 IPC, P.S.-Gabhana, District- Aligarh.
3. On the basis of forged and fabricated Mukhtarnama a sale deed regarding the property of the informant was procured by applicant no.1 in favour of his son Samayvir Singh and the applicant no.2 appeared as marginal witness in the sale deed. FIR was lodged on 11.11.2019 and investigation started and now the 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 arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. After investigation charge sheet has been submitted in the matter. It is further submitted that the applicant no.1 has absolutely no role in the execution and procurement of the forged power of attorney. It is further submitted that she is not the vendor or vendee in the alleged sale deed and no consideration amount has been passed in her favour. Applicant no.2 is only the marginal witness in the impugned sale deed and he has also received no consideration amount. It is further submitted that earlier an Application U/S 482 Cr.P.C. No. 9871 of 2010 moved by the applicants which was dismissed for want of prosecution on 15.12.2021 and after submission of the charge sheet the applicants have not been declared proclaimed offenders and no processes under Section

82/83 Cr.P.C. has been issued against the applicants. It is further submitted that one other attesting witness in the impugned sale deed Subhash has been granted bail in Cr. Misc. Anticipatory Bail Application No. 6743 of 2023 by this Court vide order dated 26.6.2023. It is also submitted that the beneficiary of the impugned sale deed Samaiveer Singh has been granted regular bail by this Court in Cr. Misc. Bail Application No. 461 of 2010 vide order dated 3.2.2010 and as per direction by this Court proceedings were started by the said Samaiveer Singh and the present applicant no.1 as well for cancellation of the impugned sale deed by way of filing original suit no. 269 of 2009 before the competent civil Court at Aligarh and the impugned sale deed has been declared void by the civil Court by judgement and order dated 4.3.2010. It is further submitted that the applicants have been cooperative during proceedings of entire investigation and now they are entitled for anticipatory bail. 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. has opposed the prayer for anticipatory bail but however could not dispute this factual aspect that the impugned sale deed has been declared void by the competent civil Court and the applicants have no criminal antecedents to their credit.

6. 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.

7. 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.

8. 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.

9. Hence, considering the settled principles of law regarding

anticipatory bail, 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 conclusion of trial in the matter.

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

11. 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 Court concerned with the following conditions :-

- i. 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence
- ii. The applicants shall not pressurize/ intimidate the prosecution witness.
- iii. 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.
- iv. The applicants shall not leave India without prior permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. concerned.

12. 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 applicants in accordance with law.

Order Date :- 30.10.2023

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