

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9959 of 2023

Applicant :- Devendra Nagar And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Ziya Uddin

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. These applications have been moved on behalf of the applicants **Devendra Nagar** and **Maksood** seeking anticipatory bail in Case Crime No.19 of 2023, under Sections 420, 467, 468, 471 IPC, P.S. Bachhrayun, District Amroha.

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

3. 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 only the witnesses of the alleged sale-deed. No consideration amount has been passed in their favour. Neither the applicants are vendor nor vendee in the alleged sale-deed. Dispute is purely of civil nature. It is also submitted that no forged and fabricated papers have been prepared by the applicants. The investigation of the case is going-on and charge-sheet has not been filed. It is further submitted that co-accused Bijendra and Jagat, who are said to be the seller of the property in question, have been granted anticipatory bail by this Court on 15.5.2023 vide Criminal Misc. Anticipatory Bail Application No. 4026 of 2023. 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.

4. Learned A.G.A. has opposed the prayer for anticipatory bail.

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

6. From the perusal of the record it reveals that the present applicants alongwith other co-accused persons fraudulently procured a sale deed of the land of the informant on the basis of forged and fabricated documents. F.I.R. was lodged and investigation started, which is still going on. It also reveals from the perusal of the record that the applicants are only the witnesses of the alleged sale-deed. No consideration amount has been passed in their favour. Neither the applicants are vendor nor vendee in the alleged sale-deed. Dispute is purely of civil nature. The applicants have been cooperative in the investigation so far.

7. 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.

8. 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.

9. 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.

10. The 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 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.

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 applicants in accordance with law.

Order Date :- 17.10.2023

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