

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 9994 of 2023**

Applicant :- Parvez Khan

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

Counsel for Applicant :- Ehtesham Afsar Khan, Manoj Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Parvez Khan** seeking anticipatory bail in Case Crime No. 395 of 2018, under Sections 406, 419, 420 IPC and 3/7 Essential Commodities Act, Police Station Bisalpur, District Pilibhit.

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

3. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his 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 present applicant is not the fair price shop dealer rather it was in the name of his father. Applicant has no concern with the alleged irregularities. It is also submitted that during investigation anticipatory bail was granted to the applicant by this Court on 23.9.2020 vide Criminal Misc. Anticipatory Bail Application No. 5742 of 2020 and he never misused the said liberty. It is also submitted that the applicant has no criminal history to his credit. The investigation of the case has been completed and charge sheet has been filed. It has been submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that the present applicant is not cooperating with the trial court. It is also submitted that charge sheet in this matter was filed on 27.11.2020 but despite service of process sent by the Court the applicant never appeared before the trial court and copies of the order sheets of the case running before the trial court have been submitted through supplementary affidavit, a perusal of which reflects that on 3.10.2023 process under Section 82 CrPC

has been issued against the applicant and on 18.10.2023 another order has been passed to issue process under Section 83 CrPC against the present applicant. It is further submitted that the anticipatory bail application of the applicant was rejected by the Sessions Court concerned on 12.7.2023 and the present application before this Court has been filed on 28.8.2023. Hence, in these circumstances the applicant is not entitled for anticipatory bail.

5. The factual matrix, as submitted by the learned AGA, is taken into account by this Court and it is found that an application U/S 482 No. 16930 of 2022 was preferred by the present applicant which was dismissed by this Court without granting any protection to the applicant vide order dated 29.6.2022 but this Court takes notice of this fact that when the present anticipatory bail application was filed on 28.8.2023 the applicant was not a proclaimed offender and even when his anticipatory bail application was rejected by the Sessions Court, Pilibhit he was not a proclaimed offender. In these circumstances, in light of the law laid down by the Hon'ble Apex Court in the case of **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, a rare and exceptional case is made out in favour of the applicant so far as the maintainability of the present anticipatory bail application is concerned.

6. So far as the facts of the case are concerned, ample evidence has been collected against the applicant that he was fully involved and actively participated in the commission of the crime alleged in the F.I.R. and a monetary loss has been caused to the government and also to the poor members of society.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the controversy finally by holding 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. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

9. The application is **rejected**.

10. In the last, learned counsel has urged that direction for expeditious disposal of bail application of the applicant be given.

11. Hence, it is observed that in case applicant surrenders before the court below and applies for bail, the same shall be considered and decided in terms of the law laid down by the Hon'ble Apex Court in **Satender Kumar Antil vs. Central Bureau of Investigation and another**, 2022 SCC OnLine SC 825.

Order Date :- 17.11.2023

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