

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10245 of 2023

Applicant :- Arif And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Anshu Singh, Hemendra Pratap Singh

Counsel for Opposite Party :- G.A., Akhilesh Srivastava, Saksham Srivastava

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State as well as learned counsel for the informant and perused the material available on record.
2. This application for anticipatory bail has been filed by applicants - **Arif, Irsad, Shakeel** and **Shahabuddin** in connection with Case Crime No.13 of 2014 (Case No.115 of 2014), under Sections 420, 467, 468, 471, 323, 504, 506 IPC, Police Station Gabhana, District Aligarh.
3. A sale deed regarding the share of the informant in his landed property was executed by an imposter Saleem Mohammad in favour of applicants no.1 & 2 on 31.12.2012 wherein applicants no.3 & 4 appeared as witnesses and on the basis of the same, all the named accused persons were trying to take unlawful possession over the landed property of the informant. F.I.R. was lodged on 17.1.2014 and after investigation now charge-sheet has been submitted in the matter.
4. It is submitted by the learned counsel for the applicants that the applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against them. They have been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been filed and cognizance has been taken into the matter. It is further submitted that in the present matter, bailable warrants were issued against the applicant on 6.4.2023 and non-bailable warrants were issued against them on 29.8.2023. Anticipatory bail application moved by the applicants before the Court of Session was rejected by the Sessions Court on 18.8.2023 whereas present

anticipatory bail application has been filed before this Court on 5.9.2023 and during the pendency of the present anticipatory bail application, a process under Section 82 Cr.P.C. was issued against the applicants on 17.10.2023.

5. It reflects from the aforesaid facts that on 18.8.2023, when the anticipatory bail application of the applicants was rejected by the Sessions Court, no non-bailable warrant was issued against them whereas after filing of the anticipatory bail application before this Court and during its pendency, a process under section 82 Cr.P.C. was issued against the applicant on 17.10.2023, which was not a proper course of law. It also reflects from the record that on 26.6.2015, an order was passed to issue process under section 82 Cr.P.C. against the co-accused Saleem, who is not the applicant at present. It also appears from the perusal of the record that till further orders of the Court, the proceedings were directed to be stayed by this Court in Application u/s 482 Cr.P.C. No.29773 of 2014 vide order dated 4.8.2014 and the said proceedings were terminated on 21.2.2023, which means that no coercive action could be taken against the applicants till 21.2.2023.

6. It is further submitted that firstly criminal misc. writ petitions were filed by the applicants wherein protection was granted to them till the submission of police report u/s 173 (2) Cr.P.C. and after filing of the charge-sheet, the same was challenged by the applicants by way of Application u/s 482 Cr.P.C. wherein till further orders, proceedings were stayed, but later on the said application u/s 482 Cr.P.C. was dismissed in default vide order dated 21.2.2023.

7. It is also submitted that the applicants no.1 & 2 are the bonafide purchasers of the property in question and applicants no.3 & 4 are the marginal witnesses of the registered sale deed. They are neither the vendor nor the vendee. It is further submitted that a civil suit was also filed by the applicants, which is also pending between the parties wherein temporary injunction order was also passed on 12.2.2014. It is further submitted that the matter is purely civil in nature. No custodial interrogation is required in this matter from the applicants. In case the applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

8. On the other hand, learned A.G.A. opposed the prayer for anticipatory bail.

9. Prima facie it appears that the matter relates to civil dispute.

10. Although charge-sheet has been submitted in the present 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.

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.

11. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87CrPC that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

12. Insofar as the present case is concerned and the general principles under Section 170CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required

during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

12. 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 end of the trial in the matter.

13. The anticipatory bail application is **allowed**.

14. In the event of arrest of the applicants in the aforesaid case crime, they shall be released on anticipatory bail till end of the trial 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 make themselves available before the court concerned on the date fixed in the matter;

(ii) 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 / her from disclosing such facts to the Court or to any police officer;

(iii) 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.

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

Order Date :- 16.11.2023

SS