

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 10346 of 2023

Applicant :- Zubair

Opposite Party :- State of U.P.

Counsel for Applicant :- Mukul Yadav, Rajesh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed on behalf of applicant in the Court today is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material available on record.
3. Apprehending his arrest, the present anticipatory bail application has been filed on behalf of the applicant - **Zubair** in Case Crime No.407 of 2018, under Sections 406, 411 and 420 I.P.C., Police Station Pakbara, District Moradabad, with a prayer to enlarge him on anticipatory bail.
4. Some goods were loaded in vehicle no. UP-21 CN 1365 for transportation but the vehicle along with goods did not reach the destination. The first information report was lodged against the owner of the vehicle Nasir and two other co-accused Muzammil Hussain and Faheem on 29.10.2018 and after investigation chargesheet has been submitted.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against her. He has 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. It is further submitted that applicant has absolutely no concern with vehicle no. UP-21 CN 1365. Applicant is said to be a partner in the aforesaid vehicle but there is no document on record to certify the same. He further submits that as a matter of fact the applicant is the owner of vehicle no. UP-21 AN 9091, which was loaded from Haridwar to Bangalore and no person made any

complaint regarding delivery of goods against the applicant. He also submits that the amount which is said to be transferred in the bank account of the applicant was in connection with vehicle no. UP-21 AN 9091, which was owned by the present applicant. He further submits that during investigation the applicant has been cooperative and notice under Section 41A Cr.P.C. was given to him by the Investigating Officer and he never misused the said liberty. He further submits that after submission of chargesheet no process under Section 82 and 83 has been issued against him by the court concerned and he has not been declared offender. Offences alleged against the applicant are punishable with the imprisonment upto maximum period of seven years. In case the applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. Per contra, learned A.G.A. has opposed the prayer for bail and submitted that the applicant has played an active role in the commission of crime, hence he is entitled for anticipatory bail.

6. 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.

7. 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 end of the trial in the matter.

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

9. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till end of the trial 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 make himself available before the court concerned on the date fixed in the matter;

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

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

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

Order Date :- 30.10.2023

Faridul