

**Court No. - 73**

**Case :- CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 10318 of 2023**

**Applicant :- Sameer Malik**

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

**Counsel for Applicant :- Siddharth Srivastava**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Nalin Kumar Srivastava,J.**

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

2. This application has been moved on behalf of the applicant - **Sameer Malik** seeking anticipatory bail in Case Crime No. 419 of 2023, under Sections 420, 467, 468, 471 IPC, Police Station- Sihanigate, District- Ghaziabad.

3. A land number 529 was given on patta by the previous owner Nawab Sadab Khan in favour of the Majid Khan s/o Aziz Khan by way of an allotment deed dated 19.6.1996 and subsequently a sale deed of the said land was executed by the aforesaid Majid Khan in favour of the present applicant by way of a registered sale deed and a consideration amount of Rs.10 crore 50 lacs was paid by the vendee/ present applicant but the FIR was lodged with the apprehension that the intention and motive of the applicant along with the other co-accused persons to grab the landed property of defence department, which is situated on 519, 520, 521 and 522 adjacent to land 529. It was also alleged in the FIR that the land number 529 as a Abadi land and it is full of residences but it has been shown as a vacant land in the sale deed by the applicant and this is also shown the dishonest intention of the applicant to grab the land of the defence department. FIR was lodged on 28.6.2023 and investigation started, which is still going on.

4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Investigation is going on in the matter. It is further submitted that the present applicant is a bona fide purchaser of land number 529 after payment of requisite consideration amount. It is further

submitted that the present applicant has no concern with land number 519, 520, 521 and 522 or any land which belongs to the defence department. It is further submitted that the defence department itself admitted that they have no concern with land number 529 and under the RTI such information has been obtained by the present applicant. It is further submitted that the plot or development work is to be developed on land number 529 by the company of the present applicant and in no way he is going to encroach upon or to take illegal unauthorized possession over the defence land. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It has been submitted that since the land number 529 is a densely populated land and there is no land vacant but in the sale deed it has been shown as a vacant land and which shows the dishonest motive or the intention of the applicant to grab the adjacent landed property of the defence department. The defence department has no concern with land number 529 and it does not belong to the said department but the applicant is trying to make unauthorized encroachment over the defence land and to buttress his submission some revenue maps and revenue records have been submitted.

6. In the present matter the applicants appears to be a bona fide purchaser. He is having no criminal history to his credit. Prima facie, it appears that only on the basis of suspicion FIR has been lodged. The applicant is said to be cooperative with the investigation of this case.

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, 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 filing of police report under Section 173(2) Cr.P.C. before the competent Court.

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

11. In the event of arrest of the applicant, he shall be released on anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(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 office.

(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.

12. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of interim protection granted to the applicant.

**Order Date :- 6.11.2023**

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