

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10511 of 2023

Applicant :- Shyamjeet And 7 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Anand Kr Srivastava, Pratibha Asthana

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Notice has been served upon the private opposite parties, but none present on their behalf.
2. Counter affidavit on behalf of the State and rejoinder affidavit on behalf of the applicants have been exchanged between the parties.
3. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicants - **Shyamjeet, Sabhajeet, Ramesh, Shafina @ Nagendra, Kalutan, Ram Kirat, Lal Chandra @ Ganga** and **Banwari** in Case No. 363 of 1996, under Section 382 I.P.C., Police Station - Deogaon, District - Azamgarh.
4. Heard learned counsel for the applicants as well as the learned AGA and perused the material available on record.
5. 130 bundles of wheat were stolen from the tube-well of the complainant by the named accused persons and they were summoned to face trial for the offence under Section 382 IPC by the Court concerned vide order dated 30.7.1996.
6. It is submitted by the learned counsel for the applicants that the applicants are innocent and have no concern with the present matter. Allegations levelled against the applicants are false. Applicants' case is squarely covered under Section 438 Cr.P.C. It is further submitted that the present case is based on a private complaint. It is also submitted that earlier protection by way of interim anticipatory bail was granted to the applicants vide order dated 26.9.2023, which was not misused by the applicants. It is further submitted that the applicants have been summoned in haste without analyzing the evidence on record properly by the Court

concerned. It is further submitted that no incriminating article has been recovered from the possession or from the place under control of the present applicants. It is also submitted that the applicants have no criminal history to their credit. If the applicants are enlarged on bail, they will not misuse the liberty. The applicants have apprehension of their arrest.

7. Per contra, learned A.G.A. vehemently opposed the prayer for anticipatory bail.

8. The summoning order in this case was passed in the year 1996, which was challenged by way of Criminal Revision No.1483 of 1996 and a stay order was passed, but in 2015, the said revision was dismissed and it is a matter of surprise that after that, for a period of about 8 years, the applicants never took any pain to get any information in respect of the aforesaid revision and after 8 years, an Application u/s 482 No. 7136 of 2023 was moved, which was also dismissed on merits. It is a case of misuse of process of the Court. The applicants never cooperated with the trial court.

9. 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.

10. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role and conduct 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 not a fit case for anticipatory bail to the applicants. The prayer made in the application is refused.

11. The anticipatory bail application is **rejected**.

Order Date :- 7.12.2023

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