

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44475 of 2019

Applicant :- Kabiiruddin And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Zafar Abbas,Aqeel Ahmad

Counsel for Opposite Party :- G.A.,Rafiuddin Ansari

Hon'ble Krishan Pahal,J.

1. Heard Sri Aqeel Ahmad, learned counsel for the applicants, Sri Rafiuddin Ansari, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and also perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicants in F.I.R./Case Crime No. 202 of 2019, under Sections 419, 420, 467, 468, 471, 120B IPC, Police Station Phoolpur, District Azamgarh, with a prayer to enlarge them on anticipatory bail.

3. As informed by learned counsel for the applicant, the applicant no. 1 Kabiruddin has expired, as such, the anticipatory bail application qua applicant no 1 Kabiruddin has been rendered infructuous.

4. The anticipatory bail application of applicant no. 1 Kabiruddin is *dismissed*.

5. The anticipatory bail application is being taken up qua applicant no. 2 Obaida.

6. As per prosecution story, the father of the applicant no. 2 Obaida is stated to have purchased the land of Gata no. 1862 (new no. is 639) through a forged sale deed from Shah Mohammad, grand-father of the informant on 29.1.1979. Subsequent to it, the grand-father of the informant had instituted a petition no. 333 of 1979 before the Civil Court concerned and the same was decided on 18.9.1980 by which the said sale deed was set aside, and the original tenure holders were reinstated as title holders of the property. The applicant in collusion with his father, Kabiruddin, is stated to have got the property mutated in the name of deceased applicant no. 1 Kabiruddin on 16.11.2018.

7. Learned counsel for the applicants has stated that the applicant no. 2 is maliciously being prosecuted in the present case due to ulterior motive and have the apprehension of his

arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. Learned counsel has next stated that the applicant is simply the heir of the co-accused person Kabiruddin and the offence committed, if any, may be by Kabiruddin only. The applicant has not applied for the mutation proceedings. The mutation proceedings has been decided in favour of Kabiruddin only.

8. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegations made against the applicant no. 2. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further submitted that the applicant no. 2 has no criminal antecedents. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

9. On the other hand, learned A.G.A. and learned counsel for the informant have vehemently opposed the prayer for grant of anticipatory bail on the ground that the applicant is the beneficiary of the said mutation proceedings, as he is the son of the applicant no. 1 (now deceased), as such, the applicant is not entitled for anticipatory bail. It is next stated that the final report (charge sheet) has been submitted against the deceased co-accused person Kabiruddin and Hozaifa only.

10. On due consideration to the arguments advanced by the learned counsel for the parties and in view of the law laid down by the Apex Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**", the applicant is entitled to be granted anticipatory bail in this case.

11. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is **allowed**.

12. In the event of arrest of the applicant no. 2, **Obaida** involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

- i. that the applicant shall make himself available for interrogation by a police officer as and when required;
- ii. that 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;

- iii. that the applicant shall not leave India without previous permission of the court;
- iv. that the applicant shall not tamper with the evidence during the trial;
- v. that the applicant shall not pressurize/ intimidate the prosecution witness;
- vi. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

13. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

14. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 8.12.2023
Shalini