

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10635 of 2023**

Applicant :- Fasahat Hussain

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

Counsel for Applicant :- Zaid Arshad

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affidavit filed today is taken on record.
2. This application has been moved on behalf of the applicant - **Fasahat Hussain** seeking anticipatory bail in Case Crime No. 253 of 1999, under Sections 419, 420, 467, 468, IPC, Police Station Phulpur, District Allahabad.
3. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
4. It has been argued 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. It is further submitted that an Application U/S 482 Cr.P.C. No. 6849 of 2003 was filed by the other co-accused persons and not by the present applicant and in this application vide order dated 19.8.2003 proceedings of the case after filing of the charge sheet were stayed, however, the proceedings were terminated vide order dated 8.4.2019. It is further submitted that on 11.01.2023 the trial Court proceeded with the matter when it was brought to the knowledge of that Court that proceeding under Section 482 Cr.P.C. has been terminated. As a matter of fact the present applicant had absolutely no knowledge about any forged entry in his favour in the revenue records and he had never been in possession of the said land on the basis of any forged entry. After completion of investigation, charge sheet has been submitted in the matter. During course of investigation the applicant has been cooperative to the Investigating Officer of the case. Applicant has no criminal history. No process under Sections 82 and 83 CrPC has been issued against the applicant and the applicant has not been declared proclaimed absconder. It is further submitted that co-accused Hari Prasad @

Bhuneshwar Nath Tiwari has already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. -3896 of 2023 by order dated 17.5.2023. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail.

6. I have considered the rival submissions made by the learned counsel for the parties.

7. It is alleged in the F.I.R. that on some government land the names of present applicant and other co-accused persons were recorded in collusion with the employees of the concerned Tehsil. F.I.R. was lodged on the basis of enquiry report dated 12.5.1999 of Additional District Magistrate, Allahabad. Investigation started and now charge sheet has been submitted.

8. 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.

9. 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.

10. 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. Considering the settled principles of law regarding anticipatory bail, 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 the end of trial.

12. The application is allowed accordingly.

13. 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 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 and will cooperate in the trial.

(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.

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

Order Date :- 7.11.2023

Fhd