

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 10981 of 2023

Applicant :- Ankit Chauhan

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Kapil Tiwari

Counsel for Opposite Party :- G.A.,Dileep Kumar Shukla

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Ram Milan Dwivedi, Advocate holding brief of Sri Kapil Tiwari, learned counsel for the applicant, Sri Nishith Tripathi, Advocate holding brief of Sri Dileep Kumar Shukla, learned counsel for the informant and Sri R.P. Patel, learned A.G.A. for the State.
3. This is the second anticipatory bail application on behalf of the applicant. The first anticipatory bail application was disposed of by this Court, as it was withdrawn by the counsel for the applicant to file a regular bail application in the light of the judgment of the Apex Court passed in the case of *Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825*, vide order dated 28.9.2022 passed in Criminal Misc. Anticipatory Bail Application No.9510 of 2022.

PROSECUTION STORY:

4. The allegations in the FIR are that the applicant alongwith two co-accused persons is stated to have duped the informant to the tune of Rs.6 lakh and entered into an agreement to sale on 21.7.2016 to sell the land of Gata No.1663, measuring 0.151 hectare, in village Asafpur, Fakawali. But later on, the applicant and other co-accused persons are stated to have neither returned the money nor executed the sale deed of the said land.

5. After much persuasion, the matter was settled on 12.6.2018 for an amount of Rs.4,71,000/-, as such, a cheque was issued by the applicant to the informant and it was stated that the same shall be honoured after the period of 45 days. The said cheque is stated to have been dishonoured. The informant kept on asking the applicant and other co-accused persons to return his due amount, but they did not heed to his request.

RIVAL CONTENTIONS:

(Arguments on behalf of applicant)

6. Learned counsel for the applicant has stated that the applicant has been falsely implicated in this case. The co-accused person Rajesh Kumar Singh has been enlarged on anticipatory bail by the Sessions Judge, Sambhal at Chandausi vide order dated 18.7.2023, as such, the applicant is also entitled for anticipatory bail on the ground of parity. Learned counsel has stated that the applicant has no criminal history to his credit. Learned counsel has further annexed several documents regarding illness of applicant who is undergoing treatment at Pandit Deen Dayal Upadhyay District Hospital, Moradabad.

7. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The applicant has apprehension of his arrest. Learned counsel has stated that the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

(Arguments on behalf of opposite party)

8. Learned counsel for the informant and learned A.G.A. have vehemently opposed the anticipatory bail application on the ground that the applicant has not come with clean hands as earlier on he had not disclosed in his anticipatory bail application that this was the second application rather he had deliberately mentioned it to be first anticipatory bail application. Counsel for the informant has further stated that after the objections by the Reporting Section, a supplementary affidavit has been

filed stating that this is the second anticipatory bail application and the rejection order of the first anticipatory bail application dated 28.9.2022 has been annexed to it.

9. Learned counsel for the informant has stated that this tantamount to forum shopping. As this Court was not inclined to grant anticipatory bail to the applicant in the light of the judgment of this Court passed in the case of ***Shivam vs. State of U.P. and Another***, reported in ***AirOnline 2021 All 484***, whereby counsel for the applicant withdrew the application and prayed for direction to apply for regular bail. The impugned order of the Sessions Judge is not effected by any infirmities as the same fact has been mentioned in it and the said anticipatory bail application has been dismissed on the ground that the applicant had not applied for regular bail.

10. Learned counsel for the informant has further stated that the applicant had agitated the provisions of Section 482 Cr.P.C. by filing Application U/S 482 Cr.P.C. No.20718 of 2019, which was also disposed of by this Court vide order dated 24.5.2019. Thus, the present anticipatory bail application and the previous one were hit by the judgment of this Court passed in the case of ***Shivam (supra)***. The applicant has not come up with clean hands, and thus, this second anticipatory bail application tantamount to forum shopping.

11. Learned counsel for the informant has also placed reliance on the judgment of the Apex Court passed in the case of ***K. Jayaram vs. BDA, (2022) 12 SCC 815***, whereby it has been held as follows:-

"In order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state

so in their pleadings in order to resolve the dispute between the parties in accordance with law."

12. Learned counsel for the informant has further stated that the present anticipatory bail application is clearly the misuse of process of law, time and energy of this Court. The co-accused person, who has been enlarged on anticipatory bail by the Sessions Judge, had also filed petition under Section 482 Cr.P.C., but the same has not yet been disposed of and is still pending.

CONCLUSION:

13. A bare perusal of the record indicates that the applicant had approached this Court by filing Criminal Misc. Writ Petition No.23177 of 2018, which was disposed of vide order dated 24.8.2018 and protection was granted to him till submission of police report under Section 173(2) Cr.P.C., subject to him cooperating with the investigation of the case. The applicant had thereupon challenged the final report (charge-sheet) by filing Application U/S 482 Cr.P.C. No.20718 of 2019 and failed in it and the same was rejected vide order dated 24.5.2019. The said order reads as under:-

*"At the very outset it is submitted that on instructions, he does not want to press the prayers made in this Application and the Applicant is willing to surrender and prayed that some protection be granted to the applicant in case he surrenders before the concerned court and further prayed that this court may be pleased to direct the trial court to follow the directions passed in matter of **Amarawati Versus State of U.P reported in 2005 Cri LJ 755 (All)** as well directions given by the Hon'ble Supreme Court in **Lal Kamendra Pratap Singh Versus State of UP and Ors reported in 2009 (4) SCC,437**.*

The prayer for quashing of chargesheet is rejected.

*The directions given by the Full Bench of this Court in **Amarawati (Supra)** as well as directions given by the Hon'ble Supreme Court in **Lal Kamendra Pratap Singh (Supra)** which are on the issue of (I) to follow the directions passed by Hon'ble Supreme in the matter of **Joginder Kumar Versus State of UP reported in 1994 (4) SCC,260, (II) Trial Court to take all endeavour to decide a bail application preferably on the same day and (III) to grant interim bail in***

appropriate cases pending disposal of final bail application, are very explicit and to be followed mandatorily in letter and spirit.

A copy of the said judgments have already been circulated to all the district courts of State of Uttar Pradesh under the orders of Hon'ble Supreme Court and this Court, therefore to repeat such direction by way of another order from this Court is neither necessary nor warranted.

In case appropriate application is filed by the applicant, the trial court shall decide the same strictly in accordance with law.

However considering the facts and circumstances of the present case, it is directed that in case the applicant surrenders before the concerned trial court within 30 days from today and applies for bail, the trial court will decide the bail application in accordance with law.

For a period of 30 days from today, no coercive action shall be taken against the applicant in the aforesaid case.

It is made clear that no further protection on any ground what so ever will be granted beyond the period above mentioned and in case applicant chooses not to surrender within 30 days from today, the trial court is directed to take all the coercive measures in accordance with law against him.

*With the aforesaid directions, this application is **disposed of.**"*

14. Thus, the applicant was granted 30 days' time to surrender before the trial court and apply for regular bail. The applicant did not comply with the aforesaid order rather filed anticipatory bail application before the Sessions Judge concerned, and thereupon, after failing there filed an anticipatory bail application before this Court which was also disposed of, in the light of judgment of the Apex Court passed in **Satender Kumar Antil (supra)**, vide order dated 28.9.2022. The said application was also withdrawn by the counsel for the applicant with an innocuous prayer to file a regular bail application in the light of the judgment of Apex Court passed in **Satender Kumar Antil (supra)** and four weeks' time was granted to him.

15. Instead of complying with the aforesaid order, the applicant had again approached this Court by filing this present anticipatory bail application and claimed parity to the co-accused person. The case of the

applicant is not at par with co-accused person, as he is the main accused person who had given the cheque worth Rs.4,71,000/- to the informant which was dishonoured. The applicant had even failed in the petition under Section 482 Cr.P.C.

16. After taking into consideration the rival contentions and said arguments tendered at Bar in the light of the judgment in *Shivam (supra)* and in *K. Jayaram (supra)*, I do not find it a fit case for grant of anticipatory bail to the applicant.

17. The present anticipatory bail application is hereby found devoid of merits and is, accordingly, *rejected*.

18. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 13.10.2023

Vikas

[Krishan Pahal, J.]