

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 10861 of 2023

Applicant :- Mohammad Rizwan

Opposite Party :- State of U.P.

Counsel for Applicant :- Umesh Kumar Dubey, Mridul Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Supplementary affidavit has been filed today, is taken on record.
2. Heard learned counsel for the applicant and learned Additional Government Advocate for the State.
3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.26 of 2023, under Sections 420/406/506 IPC, Police Station Sishamau, District Kanpur Nagar.
4. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case just to harass the applicant in fact no such incident has taken place as alleged in the impugned FIR. The applicant has never committed any offence as alleged in the impugned FIR. The applicant is a builder. An agreement was executed between the applicant and the husband of the informant for providing flat to the informant but after some time, Kanpur Development Authority seized the construction of the building and after fulfillment of all formalities, the construction work was started but unfortunately after Covid, the applicant was suffering serious illness and his treatment was going on at AIMS, due to this reason, the work of construction of flat was not completed within time. He further submits that after completing flat, the applicant approached to the informant but she was not ready to purchase the said flat and demanded his money. He further submits that the applicant has no bad intention and he is ready to pay the entire money of the informant. He further submits that similarly placed co-accused, namely, Pankaj Mehrotra and Vaibhav Mehrotra have already been granted anticipatory bail by the court below vide order dated 07.08.2023, copy of the same has been annexed as Annexure No.2 to the affidavit.
5. On the other hand, learned A.G.A. vehemently opposed the prayer for anticipatory bail of the applicant and has prayed for rejection of the same by submitting that the applicant is a habitual

criminal having previous criminal history of nine cases. He has further submitted that the applicant has not come before this Court with clean hand. In this regard, he has drawn attention of the Court towards paragraph 13 of the affidavit filed in support of the application wherein it is stated that the applicant has no criminal history except the present one whereas the applicant is having previous criminal history of nine cases. Since the applicant has not come to this Court with clean hand, hence, the applicant is not entitled for grant of anticipatory bail.

6. To avail the benefit of anticipatory bail, the criminal antecedent of the applicant should have been properly explained while filing the present application. The applicant has a criminal history of nine cases and the same has been concealed while filing the present anticipatory bail application. From the perusal of the records, it is clear that in paragraph 13 of the affidavit filed in support of anticipatory bail application, learned counsel for the applicant has averred that applicant has no criminal history, however, applicant has criminal history of nine cases. Such conduct of the applicant conspicuously reflects concealment and non-disclosure of the facts.

7. Having heard learned counsel for the parties, I find substance in the submission of learned A.G.A. that the application has suppressed his criminal history of nine cases, as noted above, and giving false affidavit that he has no previous criminal history. As the applicant has not approached this Court with clean hand and has filed the present anticipatory application suppressing the material facts, therefore, he does not deserve any indulgence by this Court. The present case does not fulfill the parameters under which anticipatory bail can be granted.

8. In the light of above, looking to the facts and circumstances of this case, submissions of learned counsel for the parties as mentioned above, gravity and nature of accusation, particularly seeing the fact that the applicant has not come to this Court with clean hand, this Court is of the view that no case for exercising its discretionary power under Section 438 Cr.P.C. is made out in favour of the applicant.

9. Accordingly, this application under Section 438 Cr.P.C. is **dismissed**.

Order Date :- 6.11.2023/Ajeet