

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 10865 of 2023

Applicant :- Pannalal And 7 Others

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

Counsel for Applicant :- Pankaj Roy

Counsel for Opposite Party :- G.A., Rama Pati Tripathi

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Pankaj Roy, learned counsel for the applicants and Sri Rama Pati Tripathi, learned counsel for the informant as well as Sri Deepak Kumar Singh, learned A.G.A. for the State and also perused the material available on record.
3. The present anticipatory bail application has been filed on behalf of the applicants in F.I.R./Case Crime No. 0132 of 2023, under Sections 420, 406, 504, 506 of IPC, Police Station Mirzamurad, District Varanasi, with a prayer to enlarge them on anticipatory bail.
4. As per prosecution story, the applicants are stated to have usurped an amount of Rs.20 lakhs of the informant of which Rs.2,50,000/- was transferred to the account of each of the applicants to sell the land for a consideration of Rs.35 lakhs. The applicants have neither returned the amount nor executed the sale-deed of the said property.
5. Learned counsel for the applicants has stated that they are maliciously being prosecuted in the present case due to ulterior motive and have apprehension of their arrest. They have nothing to do with the said offence as alleged by the prosecution. Learned counsel has further stated that the said agreement to sell between the parties is an unregistered document which has been executed on a stamp paper of Rs.100/-. It has no legal sanctity. Learned counsel has also stated that the matter of civil nature has been converted into a criminal one. The FIR has been lodged after a delay of six years and there is no explanation of the said delay caused. Learned counsel has also stated that instead of filing a money recovery suit, the informant has instituted the present FIR.
6. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegations made against them. The circumstances which, as per counsel, led to the false implication of the applicants have also been touched upon at length. It is further submitted that the applicants have no criminal history. The applicants are ready to return the said amount due towards them. In case, the anticipatory bail application of the applicants is allowed, they will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned counsel for the informant as well as learned A.G.A. have vehemently opposed the prayer for grant of anticipatory bail on the ground that subsequent to transfer of Rs.20 lakhs, the applicants had even given Rs.7,10,000/- more to the applicants but they are deliberately withholding the said amount. However, learned AGA could not dispute the fact that the applicants have no criminal history.

8. Considering 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 applicants are entitled to be granted anticipatory bail in this case.

9. 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 applicants is **allowed**.

10. In the event of arrest of the applicants, **Pannalal, Mannalal, Jiyut, Jwala, Munnuram, Ramji, Mataru and Baliram**, 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 applicants shall make themselves available for interrogation by a police officer as and when required;
- ii. that the applicants 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 applicants shall not leave India without previous permission of the court;
- iv. that the applicants shall not tamper with the evidence during the trial;
- v. that the applicants shall not pressurize/ intimidate the prosecution witness;
- vi. that the applicants shall appear before the trial court on each date fixed unless personal presence are exempted;

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

12. It is made clear that observations made in granting anticipatory bail to the applicants 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 :- 18.10.2023
Siddhant