Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 10831 of 2023

Applicant :- Hamdan Zia
Opposite Party :- State of U.P.
Counsel for Applicant :- Istyak Khan
Counsel for Opposite Party :- G.A.,Khursheed Ahmad,Saddam Husain

Hon'ble Krishan Pahal,J.

1. Heard Sri Istyak Khan, learned counsel for the applicant and Sri Ashutosh Srivastava, learned A.G.A. for the State as well as perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No. 302 of 2023, under Sections 419, 420, 506, 467, 468, 471, 120-B of IPC, Police Station Phoolpur, District Azamgarh, with a prayer to enlarge him on anticipatory bail.

3. At the very outset, learned counsel for the applicant has claimed parity with the co-accused Firdous Ziya, who has already been granted anticipatory bail by this Court in Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No.10256 of 2023 vide order dated 13.9.2023. Since the case of the applicant is at par with the co-accused, who has already been granted anticipatory bail, the applicant is also entitled for the same on the ground of parity. Learned counsel has also stated that the applicant has criminal history of one case which has been explained in the affidavit.

4. The prayer for anticipatory bail has been vehemently opposed by learned AGA. However, the aforesaid factual aspect of the parity to the co-accused has not been disputed by him.

5. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the judgement passed by this Court in ***Nanha S/o Nabhan Kha vs. State of U.P., 1993 Crl.L.J. 938*** and the judgement passed by the Apex Court in ***Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation, MANU/SCOR/22410/2021,*** without expressing any opinion on the merits of the case, the Court is of the view that the applicant is entitled to be granted anticipatory bail in this case. The bail application is **allowed** on the ground of parity.

6. In the event of arrest of the applicant, **Hamdan Zia** 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 the previous permission of the court;
iv. that in case, the charge-sheet is submitted, 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;

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

8. 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 :- 17.10.2023
Siddhant

Digitally signed by :-
SIDDHANT SAHU
High Court of Judicature at Allahabad