

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11046 of 2023

Applicant :- Premchandra Patel

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

Counsel for Applicant :- Pankaj Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicant and learned Additional Government Advocate for the State.
2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No. 2577 of 2011, under sections 406, 409, 420, 120-B IPC, P.S. Kotwali, District Lalitpur, during the pendency of trial.
3. It is contended by learned counsel for the applicant that informant is said to have committed embezzlement while posted as Secretary in Dilwara Sada Sahkari Samiti Limited, Dailwara, Vikas Khand Jakhaura, District Lalitpur and at that time applicant was posted as Addl. District Co-operative Officer and In-charge, on which informant has been placed under suspension by the Member Secretary, District Administrative Committee, Lalitpur and applicant has issued a notice to the informant to handover the charge upon which informant lodged the present FIR against the applicant and others by way of application under Section 156(3) Cr.P.C. The applicant is said to have challenged the said FIR by way of filing Criminal Misc Writ Petition No. 102 of 2012 in which applicant and others have been granted stay of arrest vide order dated 5.1.2012. In the meantime, charge sheet has been filed against the applicant. Aggrieved thereby applicant again approached this Court by way of filing Criminal Misc Application 482 No. 36392 of 2016 in which further proceedings of criminal case was stayed by this court by order dated 16.1.2017. It is further submitted that lateron court below issued bailable warrant against the applicant in the light of law laid down by Hon Apex Court in the case of **Asian Rsurfacing of Road Agency Vs Central Bureau of Investigation, (2018) 16 SCC 299**, thereafter, apprehending his arrest applicant approached court below by filing anticipatory bail application which has been rejected by the court

below, hence the present application has been filed.

4. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case by the police. Learned counsel for the applicant submits that there is no evidence to connect him with the alleged crime. The applicant is having definite apprehension that he may be arrested by the police any time.

5. Learned AGA has opposed the prayer for bail, but could not dispute the said facts.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, he is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98***. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

7. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant Premchandra Patel, involved in the aforesaid crime be released on anticipatory bail on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(1) The applicant shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation;

(2) 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; and

(3) The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(4) The applicant shall surrender his passport, if any, to the concerned Court forthwith. His passport will remain in custody of the concerned Court.

(5) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the

witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

(6) In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.***

(7) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

8. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

9. With the aforesaid observations/ directions, the application stands **disposed of.**

Order Date :- 13.10.2023

RavindraKSingh