

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 10978 of 2023

Applicant :- Najamuddin And 10 Others

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

Counsel for Applicant :- Irshad Saleem

Counsel for Opposite Party :- G.A., Sameer Khan

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

2. This application has been moved on behalf of the applicants **1.Najamuddin, 2. Asti, 3. Rahimuddin, 4. Saleem, 5. Sameer, 6. Liyakat, 7. Nabarak Khan, 8. Maju, 9. Sonu, 10. Guddu, 11. Nazar Mohammad** are seeking anticipatory bail in Case Crime No. 340 of 2023, under Sections 147, 148, 149, 323, 504, 506, 307 IPC, Police Station- Naugawan Sadat, District- Amroha.

3. It has been submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. The investigation of the case has been completed and charge-sheet has been filed and cognizance has been taken by the Court concerned. It has been submitted that in case applicants are granted anticipatory bail, they will not misuse the liberty of bail and would obey all conditions of bail.

4. At the very outset learned State counsel has contended since a process under Section 82 Cr.P.C. has already been issued against the present applicants, they are proclaimed offender and are not entitled for anticipatory bail, particularly in the light of dictum promulgated by the Hon'ble Apex Court in the case of **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, decided on 29.8.2023 wherein the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated, which reads as under (relevant portion of paragraph 17 of the said judgment):

"17. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory

bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender....."

5. On the other hand learned counsel for the applicants impressed upon the fact that some of the co-accused persons have been granted anticipatory bail by this Bench and also by the co-ordinate Bench and since the case of the present applicants is on the same footings, they are also entitled for anticipatory bail.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

7. Before going into the merits of the case, it is to be seen whether the accused applicants have been declared proclaimed offenders and this fact restrains the Court to consider the issue for grant of anticipatory bail in favour of the present applicants.

8. From material placed before the Court, it appears that the anticipatory bail application moved by the applicants before the Sessions Court at Amroha has been rejected on 2.8.2023, subsequently an order to issue process under Section 82 Cr.P.C. against the present applicants was passed on 11.9.2023 under the instructions of the Court and they fell into the category of proclaimed offender. The anticipatory bail application by the present applicants was moved before this Court on 27.9.2023, which means that when the application for grant of anticipatory bail was filed before this Court, the present applicants were already proclaimed offenders. Since, the application for grant of anticipatory bail application was moved before this Court after about two months from the date of rejection of the anticipatory bail application by the Sessions Court, it cannot be said that the applicants were engaged in taking the legal recourse during the aforesaid period of two months.

9. The conduct of the applicant falls within the ambit of the law promulgated by Hon'ble Apex Court in **Prem Shankar Prasad Versus State of Bihar and Another, 2021 SCC OnLine Supreme Court 955**. In the facts of that case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it reveals that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order passed by the Magistrate. Only thereafter the accused moved an

application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this-

"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

20. In the case of State of Madhya Pradesh v. Pradeep Sharma (Supra), it is observed and held by this court that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr. P.C., he is not entitled to relief of anticipatory bail."

10. The Hon'ble Apex Court in **Lavesh Vs. State (NCT of Delhi) (2012) 8 SCC 730** has held that:

"Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

11. Further, the judgment passed in Lavesh (supra) was referred by the Hon'ble Apex Court in State of Madhya Pradesh vs. Pradeep Sharma, (2014) 2 Supreme Court Cases 171 and referring to paragraph 12 of the judgment of Lavesh (supra), in paragraph 16 of the said judgment, it was observed, relevant portion of which is as under :

"16.....It is clear from the above decision that if anyone is declared as an absconder / proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

12. Hence, from the aforesaid case laws it is evident that as per normal rule, anticipatory bail cannot be granted to an accused who is absconding or concealing himself in order to avoid execution of the process of the Court and has been declared as proclaimed

offender. Further, in view of the recent pronouncement of the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085**, decided on 29.8.2023, wherein the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated, the present application is not maintainable.

13. In view of that, I deem it not a fit case to grant anticipatory bail to the present applicants. Such a person, who does not cooperate with the investigation at all, is not entitled to get any relief from this Court by way of anticipatory bail.

14. The anticipatory bail application is, accordingly, **rejected**.

Order Date :- 5.12.2023

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