

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11265 of 2023

Applicant :- Omkar Singh

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

Counsel for Applicant :- Irshad Ahmad

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

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affidavit filed today is taken on record.
2. Vakalatnama filed by Sri Adil Khan, advocate on behalf of the informant / opposite party no.2 is also taken on record.
3. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for the informant / opposite party no.2 and perused the record.
4. This application has been moved on behalf of the applicant - **Omkar Singh** seeking anticipatory bail in Case Crime No.305 of 2022, under Sections 420, 467, 468, 471, 323, 342, 364A, 506, 34, 120-B IPC, Police Station Rajabpur, District Amroha.
5. As per prosecution story, on 29.11.2022 at about 8:00 a.m., the applicant and other co-accused persons are stated to have abducted the informant from Venkateshwara University and kept him in a room where they assaulted him with kicks and fists and threatened him to kill. Subsequently, after keeping him in captivity, they are stated to have taken him to the office of Sub-Registrar, Dhanaura, whereby the applicant and other co-accused persons are stated to have executed six sale deeds of gata no.163 and are stated to have released him the same day. On 05.12.2022, it came to the knowledge of the informant that the said sale deeds have been executed. F.I.R. was lodged on 21.12.2022 and investigation started, which is going on.
6. Learned counsel for the applicant submits that that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. He has been falsely implicated in this matter. Allegations levelled against the applicant are false. Investigation is going on into the matter. No

charge-sheet has been submitted into the matter so far. It is further submitted that there is no independent witness of the alleged incident and the F.I.R. has been lodged delayed without any plausible explanation of delay. It is further submitted that the co-accused Hina Parveen has been granted anticipatory bail by this Court vide order dated 29.8.2023 passed in CrI. Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. - 9767 of 29023. It is further submitted that the applicant is cooperating with the investigation. Punitive process has been issued against the applicant under section 82 Cr.P.C. on 25.9.2023, but the said proceedings have been initiated during the interregnum period when the applicant was trying to get a legal protection from the court of law. It is further submitted that the criminal history of the applicant has been explained. No custodial interrogation is required in the matter. The applicant, under these circumstances, is entitled for anticipatory bail.

7. Learned A.G.A. as well as learned counsel for the informant/opposite party no.2 opposed the prayer for anticipatory bail and it has been submitted that the applicant is not cooperating with the investigation. He has been declared as a proclaimed offender by the court, as process u/s 82 Cr.P.C. has been issued against him on 25.9.2023 under the orders of the court concerned and as such, he is not entitled for anticipatory bail.

8. Making counter to this specific contention, it has been submitted by the learned counsel for the applicant that the anticipatory bail application moved by the applicant before the Sessions Court, Amroha was rejected on 18.9.2023 and application for same relief has been filed before this Court on 27.9.2023. It is further submitted that a process u/s 82 Cr.P.C. against the applicant is said to be issued on 25.9.2023. It reflects from the aforesaid facts that when the applicant was trying to take protection by way of anticipatory bail from the High Court, during this interregnum period, process u/s 82 Cr.P.C. was issued. No delay has been caused in filing the anticipatory bail application before this Court and within ten days after the rejection of the anticipatory bail application by the Sessions Court, the same has been moved before the High Court and during this period, proceedings u/s 82 Cr.P.C. were issued by the Court. It appears that the applicant was not absconding from the court of law. Hence, the issuance of process under section 82 Cr.P.C. does not create a bar against the applicant to move application for anticipatory bail in this matter in view of law laid down in **Lavesh Vs. State (NCT of Delhi)(2012) 8 SCC 730** and in **Manish Yadav Vs. State of U.P., 2022 0 Supreme**

(All) 629 and he has made out an exceptional case in his favour for the sake of maintainability of anticipatory bail application.

9. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

10. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

11. Considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

12. The anticipatory bail application is **allowed**.

13. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court on his furnishing a personal bond of Rs.50,000/- with two

sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

14. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 12.10.2023

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