

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11213 of 2023**

Applicant :- Rakesh Kumar Goel

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

Counsel for Applicant :- Dilip Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant Rakesh Kumar Goel seeking anticipatory bail in Case No. 28126 of 2022, Case Crime No. of 272 of 2022, under Sections 420, 406 IPC, Police Station- Brahmapuri, District- Meerut.
3. A sale deed was executed by the present applicant in favour of the informant concealing the fact that the property in question was mortgaged with the bank for payment of some loan against the applicant. FIR was lodged on 30.08.2022 and now charge sheet has been submitted in this matter.
4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant 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 is further submitted that the parties to the sale deed were orally agreed that despite bank loan against the said property and the informant was ready to purchase the same. It is further submitted that the informant himself had borrowed Rs.1,50,000/- from the applicant. It is also submitted that the possession of the said property has already been delivered to the informant. It is also submitted that out of the whole entire loan amount of Rs.13.50 lacs a sum of Rs.7.50 lacs has already been deposited by the applicant in the bank and he is regularly paying the money to the bank. It is further submitted that no cheating or fraud has been committed by the present applicant. The applicant has one solitary case against him, which has been explained in the supplementary affidavit. It is

also submitted that during investigation he has been cooperative and now after filing of the charge sheet he is entitled for anticipatory bail. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It is vehemently argued that no where in the impugned sale deed it has been mentioned that the property in question is mortgaged with the bank for payment of some loan against the applicant. It is further submitted that in this way by playing a fraud by concealing a material fact that the property was already mortgaged to the bank, the sale deed in question was executed by the applicant thereby causing a huge monetary loss to the informant of the case. It is further submitted that the informant never knew the factum of mortgage of the property in question prior to the execution of the sale deed.

6. In this matter, it reveals that after completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned. In *Sushila Aggarwal and others vs. State (NCT of Delhi) and another*, (2020) 5 SCC 1, the Hon'ble Apex Court has settled the controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

7. It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

8. It has been further held by the Hon'ble Apex Court 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.

9. In the facts and circumstances of the case and on the basis of the material available on record, prima facie it appears that a deliberate fraud has been committed by the present applicant by concealing the material fact of the mortgage of the property in

question with the bank and in view of the law laid down by the Hon'ble Apex Court, I deem it not a fit case to grant anticipatory bail to the present applicant. Prayer made in the application is refused.

10. The anticipatory bail application is rejected.

11. In the last, learned counsel for the applicant has urged that direction be given to the learned Court concerned to consider and decide the bail application of the applicant in terms of the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825.***

12. Hence, it is observed that the bail application of the applicant, if moved, shall be considered and decided by the Court concerned in terms of the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil case*** (supra).

13. It is further directed that the Court concerned while considering the bail application of the applicant in the light of ***Satender Kumar Antil*** case (supra), shall pass an order strictly in compliance of the directions given in the aforesaid judgement by the Hon'ble Supreme Court, in letter and spirit, particularly complying with the order dated 21.3.2023 of the Hon'ble Apex Court in the aforesaid matter.

Order Date :- 21.11.2023

Fhd