

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11282 of 2023

Applicant :- Virendra Yadav @ Raju

Opposite Party :- State of U.P.

Counsel for Applicant :- Prem Shankar, Ashok Kumar Yadav

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 **Virendra Yadav @ Raju** seeking anticipatory bail in Case Crime No. 177 of 2019, under Sections 409, 120-B IPC, Police Station Pataherwa, District Kushinagar.
3. It is alleged in the F.I.R. that co-accused, Sudama Yadav was a Secretary of Sadhan Sahkari Samiti Ltd. Jauramnarakhan Vikash Khand-Fajilnagar and embezzlement of public fund was committed by the said co-accused and it was found that some of the amount has already been withdrawn in the name of the present applicant, who happens to be the son of the main accused Sudama Yadav. F.I.R. was lodged on 13.06.2019 and investigation started which is still going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It has been submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.
5. It is further submitted that the accused applicant has no concern with the Sadhan Sahkari Samiti Ltd. Jauramnarakhan Vikash Khand-Fajilnagar and he is not an office bearer in the aforesaid cooperative society. It is next submitted that father of the present applicant transferred some amount and he has absolutely no knowledge from where this amount has been earned by his father.

It is also submitted that he has been cooperative with the investigation of the case and he is having no criminal history and as such, he is entitled for anticipatory bail.

6. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that a huge amount has been deposited by way of cheque in the bank account of the present applicant by the main accused, Sudama Yadav. He is fully involved in the criminal conspiracy of the public fund along with his father. It is next submitted that he has also enjoyed the wrongful gain. It is further submitted that it is a case of embezzlement of public exchequer and documentary and electronic device is available in the case diary. It is next submitted that ample and sufficient evidence has been collected against the applicant during the course of investigation.

7. *In Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1*, the Hon'ble Apex Court has settled 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.

8. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

9. The application is **rejected**.

10. However, if he applies for bail, it shall be disposed of in accordance with law.

Order Date :- 12.10.2023

Shivangi