

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11220 of 2023

Applicant :- Arvind Babu And Another

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

Counsel for Applicant :- Raghuraj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affidavit filed today is taken on record.
2. This application has been moved on behalf of the applicants - **Arvind Babu** and **Sanju Devi** seeking anticipatory bail in Case Crime No. 468 of 2017, under Sections 419, 420, 467, 468, 471 IPC, Police Station Ajeetmal, District Auraiya.
3. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.
4. At the outset, learned counsel for the applicant states that he is not pressing the present application in respect of applicant no.2 - Sanju Devi.
5. It is submitted by the learned counsel for the applicants that applicant no.1 is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant no.1 are false. It is further submitted that the dispute pertains to purely of civil nature and civil suits are still pending between the parties. Earlier the applicant no.1 alongwith other co-accused persons had approached this Court through application u/s 482 No. 16503 of 2018 wherein an interim protection was granted by this Court vide order dated 10.5.2018 but however after submission of charge sheet the trial court has proceeded with the matter following the directions given in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. and another vs. Central Bureau of Investigation, (2018) 16 SCC 299**. It is also submitted that at present the applicant no.1 has not been declared proclaimed offender and no process under Sections 82/83 CrPC has been issued against him. After completion of investigation, charge sheet has been submitted in the matter. Applicant no.1 has no criminal

history. In case applicant no.1 is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

6. Learned A.G.A. opposed the prayer for anticipatory bail.

7. I have considered the rival submissions made by the learned counsel for the parties.

8. In this matter, the allegation as per record is that an excess area of land, of which the applicant no.1 was not the owner, was sold by him to applicant no.2 whereas the said excess land belonged to the informant. F.I.R. was lodged and after investigation charge sheet has been submitted. It also appears that the applicant no.1 has been cooperative during investigation and now after submission of charge sheet no custodial interrogation appears to be required. It also reveals from the perusal of the record that the dispute is purely of civil nature and civil suites are pending between the parties.

9. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

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.

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.

10. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicants and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant no.1 till the end of trial.

11. The application is **allowed** accordingly.

12. In the event of arrest of the applicant no.1, he shall be released on anticipatory bail on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

(i) The applicant no.1 shall make himself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) The applicant no.1 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 no.1 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.

13. In case of default of any of the conditions, the same may be a ground for cancellation of protection granted to the applicant no.1.

Order Date :- 18.10.2023

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