

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11338 of 2023

Applicant :- Areeb @ Areeb Zafar

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

Counsel for Applicant :- Paritosh Sukla,Prakhar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant as well as the learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant - **Areeb @ Areeb Zafar** seeking anticipatory bail in Case Crime No.55 of 2023, under Sections 454, 380, 504, 506 IPC, Police Station Quarsi, District Aligarh.
3. In the F.I.R., it is alleged that on the date of incident at about 1:40 in the afternoon, the nephew of the informant - Faraz saw the accused applicant along with other accused persons committing theft of about one quintal of iron saria and nine bags of cement after breaking the lock of the plot under construction and loading the same on a tractor-trolley.
4. It is submitted by the learned counsel for the applicant that the entire incident is false and fabricated and no incident happened, as alleged in the F.I.R. It is further submitted that it is highly improbable that in the afternoon, at public place, such theft was committed, as alleged in the F.I.R. 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. It is further submitted that investigation into the matter is going on. Co-accused Brij Mohan Morgan, Atif and Akaram having identical role have been granted anticipatory bail on 26.4.2023 and 3.5.2023 vide Criminal Misc. Anticipatory Bail Application Nos. 2902 of 2023 and 2561, respectively.
5. Learned A.G.A. opposed the prayer for anticipatory bail and he has fairly admitted that the statement of sole witness Faraz has not

been recorded so far by the investigating officer during the course of investigation.

6. 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.

7. 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 applicants till the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

8. The anticipatory bail application is **allowed** accordingly.

9. 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 she has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

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

Order Date :- 13.10.2023

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