

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11290 of 2023

Applicant :- Randheer Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ishwar Kumar Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Supplementary affidavit has been filed today, is taken on record.
2. Heard Mr. Ishwar Kumar Upadhyay, learned counsel for the applicant and learned Additional Government Advocate for the State.
3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.0205 of 2023, under Sections 379 and 409 IPC, Police Station Chandauli, District Chandauli.
4. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case just to harass the applicant in fact no such incident has taken place as alleged in the impugned FIR. The applicant has never committed any offence as alleged in the impugned FIR. As per allegation, 229.700 quintal liters refined pamoline oil has been embezzled by the applicant whereas the fact is that one Shubham Kumar Das executed a notorial power of attorney in favour of the applicant for looking after his transport business under the direction of Shubham Kumar Das. The driver of the alleged Tanker lodged the NCR regarding incident. The applicant is having no relation with the ownership and the appointment of the driver Yogendra Kumar by any means. He further submits that no criminal liability arises against the applicant as the informant's company having civil remedy against the applicant or the owner of the Tanker for recovery of his damages. The dispute between the parties are purely civil in nature but has given criminal colour just to harass the applicant. He further submits that criminal liability, if any, arose which goes to Shubham Kumar Das as well as driver Yogendra Kumar. Lastly, it is argued that the applicant is neither merchant nor banker nor agent, as such, Section 409 IPC is not made out against the

applicant. The applicant is having no previous criminal history as has been mentioned in paragraph 26 of the affidavit. He further submits that applicant has apprehension of imminent arrest and in case, the applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. has vehemently opposed the prayer for anticipatory bail of the applicant but could not dispute the aforesaid contentions raised by learned counsel for the applicant.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, he is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98***. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

7. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant-**Randheer Kumar**, involved in the aforesaid case crime be released on anticipatory bail till conclusion of trial on furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(i) The applicant shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation.

(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 from disclosing such facts to the Court or to any police officer.

(iii) The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(iv) The applicant shall surrender his passport, if any, to the concerned Court forthwith. His passport will remain in custody of the concerned Court.

(v) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

(vi) In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC***

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(vii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

8. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

9. With the aforesaid observations/ directions, the application is **disposed of.**

Order Date :- 7.11.2023

Ajeet