

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11304 of 2023

Applicant :- Inam And Another

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

Counsel for Applicant :- Ashfaq Ahmed Ansari

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Sri Ashfaq Ahmed Ansari, learned counsel for the applicants and learned Additional Government Advocate for the State.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case No. 2616 of 2022 arising out of Case Crime No.01 of 1995, under Sections 218, 467, 468, 471, 120-B I.P.C., P.S.- Gagal Heri, District- Saharanpur.

3. As per FIR, allegations against the applicants are that the applicants have encroached and has taken illegal possession over the Goan Sabha land.

4. Learned counsel for the applicants has submitted that the applicants have been falsely implicated in the present case due to ulterior motive. The present FIR has been lodged by Mutwalli of Masjid of the same village who is not an aggrieved person. He submitted that there are 8 accused persons in the impugned FIR and out of five have died during the pendency of the case and only three accused persons are alive including the applicants. The applicant no.1 is aged about 62 years and applicant no.2 is aged about 64 years. He further submitted that the applicants built house over the land in dispute after the resolution of the Goan Sabha approved by the S.D.M. concerned. He submitted that matter was investigated and final report was submitted by the I.O. concerned in favour of the applicants, thereafter, a protest petition was filed by the complainant and the applicant was summoned by the court below on 18.10.1997. Thereafter, the applicant approached this Court in Application U/S 482 No. 3966 of 1999 and co-ordinate Bench of this Court vide order dated 9.9.1999 stayed the further proceedings of the case. The stay order dated 9.9.1999 was remain in

operation till 19.10.2011, thereafter, the applicant was summoned for the first time vide order dated 11.8.2023 passed by the court below because neither he was aware nor he was summoned. He submitted that after summoned by the court below the applicant moved anticipatory bail application before the court below and the same was rejected by the court below vide order dated 27.9.2023, hence the present anticipatory bail application. The applicants are having no previous criminal history as has been mentioned in paragraph 23 of the affidavit. Learned counsel for the applicants further submits that applicant has apprehension of imminent arrest and in case, applicants are released on anticipatory bail, they will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. has opposed the prayer for anticipatory bail of the applicants but could not dispute the submissions advanced by learned counsel for the applicants.

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 applicants shall be released on anticipatory bail. Let the applicants- **Inam** and **Yunus**, involved in the aforesaid case crime be released on anticipatory bail 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 applicants 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 applicants 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 them from disclosing such facts to the Court or to any police officer.

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

(iv) The applicants shall surrender their passport, if any, to the concerned Court forthwith. Their passport will remain in custody of the concerned Court.

(v) The applicants shall file an undertaking to the effect that they 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.s

(vi) In case, the applicants 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 98**.

(vii) The applicants 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 their bail and proceed against them 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 applicants.

9. The trial court is directed to expedite the trial, expeditiously, in accordance with law, within a period of six months from today.

10. With the aforesaid observations/ directions, the application stands **allowed**.

Order Date :- 19.10.2023

Krishna*