Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11462 of 2023

Applicant :- Mahendra Kumar
Opposite Party :- State of U.P.
Counsel for Applicant :- Kalyan Sundram Srivastava,Kamlakar Pal,Mahesh Pandey
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 anticipatory bail application has been moved by the applicant – **Mahendra Kumar** seeking anticipatory bail in case crime no.220 of 2023 under Sections 147, 323, 504, 506, 395 IPC, Police Station Bhelupur, District Varanasi.

3. A dacoity was committed with the informant by named accused Ajeet Mishra along with 10 to 12 miscreants, who snatched away Rs.1,40,00,000/- from the informant after beating, abusing and threatening him for life. On the next day, the informant came to know that the police has retrieved Rs.92,94,600/- as unclaimed money. F.I.R. was lodged on 5.6.2023 and investigation started, which is going on.

4. It is submitted by the learned counsel for the applicant that the applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. He has been falsely implicated into this matter. Allegations levelled against the applicant are false. It is further submitted that the present applicant is a constable and was posted at P.S. Bhelupur. He was not the member of the police team, who has allegedly grabbed the recovered money. It is further submitted that earlier a Crl. Misc. Writ Petition No.11799 of 2023 was filed by the applicant along with other co-accused persons, which was dismissed by this Court vide order dated 31.7.2023 without giving any relief to the applicant. It is further submitted that in the said incident, the applicant was terminated from his service, but

subsequently a writ petition being Writ -A No.13132 of 2023 was preferred by him, which was allowed vide order dated 21.8.2023 and the termination order was quashed. It is further submitted that Rs.92,94,600/- were recovered by the police as unclaimed money from Vehicle No. UP65 BV 4321 and the currency notes were counted and seized by the police party and a recovery memo was also prepared and the entire proceedings were performed as per law by the police. It is further submitted that the allegation levelled against the applicant and other co-accused that Rs.1,40,00,000/- were recovered by the police but only Rs.92,94,600/- were shown to be recovered and the rest amount of Rs.47,05,400/- was kept by the present applicant and other co-accused persons is totally false and fabricated. The whole proceedings of recovery and seizure of money were performed in writing and are on record and no money was grabbed by the applicant. It is further submitted that the evidence, which is collected during investigation, prima facie shows that the owner of the money, who is the native of the State of Gujarat, was not in a position to keep Rs.1,40,00,000/- at one time with his employee, as claimed by the prosecution. It is further submitted that the applicant is cooperating with the investigation of the case and no charge-sheet has been submitted against him so far and investigation is going on and as such, the applicant is entitled for anticipatory bail.

5. On the other hand, learned A.G.A. opposed the prayer for anticipatory bail and it has been submitted that the I.O. of the case has collected the evidence to the effect that a recovery of Rs.92,94,600/- only was deliberately shown by the police party and rest of the amount i.e. about Rs.47,05,400/- was embezzled by the policemen. It is also submitted that the anticipatory bail application of co-accused Ramakant Dubey, who was S.H.O. of P.S. Bhelupur, has been rejected by this Court vide order dated 5.10.2023 passed in Crl. Misc. Anticipatory Bail Application No.10997 of 2023 and the present applicant, who was working as Constable in the said police station was accompanying the said aforesaid accused and this fact has been admitted in paragraph 28 of the affidavit annexed with the present anticipatory bail application.

6. Prima facie, from the perusal of the record, it appears that according to evidence collected by the I.O., Rs.1,40,00,000/- was robbed by the miscreants from the employee of the informant and subsequently the same was recovered from a vehicle as unclaimed money, but when the police retrieved it, a recovery of Rs.92,94,600/- only was shown and rest of the amount i.e.

Rs.47,05,400/- was kept by the accused persons, which was distributed amongst them. The anticipatory bail application of co-accused Ramakant Dubey, who was S.H.O. of P.S. Bhelupur, has been rejected by this Court.

7. 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.

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 and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant.

9. The anticipatory bail application is, accordingly, rejected.

Order Date :- 20.11.2023
ss

Digitally signed by :-
SANDEEP SHARMA
High Court of Judicature at Allahabad