

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11314 of 2023

Applicant :- Dinesh Kumar

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

Counsel for Applicant :- Hemendra Pratap Singh, Anshu Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicant- **Dinesh Kumar** in connection with Case Crime No. 82 of 2004, under Sections 420, 467, 468, 471 IPC, Police Station Pisawah, District Aligarh.

3. It is submitted by the learned counsel for the applicant that applicant 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 are false. It is further submitted that during course of investigation no evidence was found against the present applicant and in the charge sheet the I.O. has mentioned that no evidence was found against the present applicant but since he was named in the F.I.R., charge sheet was submitted against him. It is also submitted that earlier the applicant alongwith other co-accused had approached this court through application U/s 482 No. 521 of 2006 and vide order dated 13.1.2006 interim protection was granted to the present applicant but however the trial Court 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, proceeded with the matter and subsequently non-bailable warrant was issued against him. It is also submitted that at present no interim protection is operative in favour of the applicant in the said application u/s 482 CrPC. After completion of investigation, charge sheet has been submitted in the matter. It is further submitted that the anticipatory bail application was moved by the applicant on 18.9.2023 as per supplementary affidavit and process under Section 82 Cr.P.C. was issued after submission of charge sheet against the applicant on 21.9.2023, which means that only

pending application for anticipatory bail application punitive process was issued against the applicant, which was not a lawful procedure. It is further submitted that on 28.9.2023 the anticipatory bail application of the applicant was rejected by the Sessions Court at Aligarh and thereafter without undue delay the present application before this Court was filed on 9.10.2023. It is further submitted that co-accused Kuldeep Singh has already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 11301 of 2023 by order dated 19.10.2023. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail but could not dispute this factual aspect that in the charge sheet the I.O. of the case has mentioned that no evidence was found against the present applicant but since he was named in the F.I.R. charge sheet was submitted against him.

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

6. It has been alleged in the F.I.R. that informant paid Rs. 60,000/- to the main accused Tarachand Sharma and also to the present applicant and other co-accused Kuldeep Singh for providing some employment in the Military but, however, no employment was provided. F.I.R. was lodged and the police retrieved some forged marksheets, photographs and other incriminating materials from the possession of the main accused Tarachand Sharma. In the statement made before the police by the main accused Tarachand Sharma, the name and role of the present applicant came into light. After investigation charge sheet has been submitted in the matter. It also reveals that the applicant has been cooperative during investigation.

7. It reveals from the perusal of the record that no process under Section 82/83 Cr.P.C. has been issued against the applicant till date and he has cooperated during the investigation.

8. Although the charge sheet has been submitted in this matter but 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.

9. 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.

10. 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. On the basis of material available on record it transpires that when anticipatory bail application was moved by the applicant before the Sessions Court was pending process under Section 82 Cr.P.C. was issued against him. It was not a lawful procedure indeed accused applicant was not absconding during that period but he was taking recourse of legal forum, hence, the applicant has made out a rare and exceptional case where his application for grant of anticipatory bail may be considered as maintainable.

11. 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 a fit case for anticipatory bail to the applicant till conclusion of trial in the matter.

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

13. In the event of arrest of the applicant in the aforesaid case crime, 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 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 or tamper with the evidence.

ii. The applicant shall not pressurize/ intimidate the prosecution witness.

iii. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

iv. The applicant shall not leave India without prior permission of the Court and if he has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

14. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicant in accordance with law.

Order Date :- 9.11.2023

Fhd