

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11495 of 2023

Applicant :- Anuj Tripathi And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Bijendra Kumar Tripathi, Lokesh Kumar Mishra

Counsel for Opposite Party :- G.A., Ganesh Kumar

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Lokesh Kumar Mishra, learned counsel for the applicants and Sri Ganesh Kumar, learned counsel for the informant as well as Sri R.P. Patel, learned A.G.A. for the State and also perused the material available on record.
3. The present anticipatory bail application has been filed on behalf of the applicants, **Anuj Tripathi** and **Abhay Tripathi** in Complaint Case No.13802 of 2020 (CNR No. UPKN04-021755-2020), Saurabh Dwivedi Vs. Anuj Tripathi & Others, under Sections 452, 323, 504, 506, 352, 386 of IPC, Police Station Kalyanpur, District Kanpur Nagar, pending in the Court of Metropolitan Magistrate, VII, Kanpur Nagar, with a prayer to enlarge them on anticipatory bail.
4. As per prosecution story, the complainant had taken an amount of Rs.10 lakhs on loan from the applicant no.1 Anuj Tripathi on 07.04.2018. The complainant is stated to have returned the complete amount to the applicant no.1 but at the time of giving the said loan, an agreement was entered into and some blank cheques were issued by the complainant and his wife, as such, the applicants had misused the said cheques and the case u/s 138 of Negotiable Instruments Act has been instituted. There are other allegations of sexual assault against the applicants.
5. Learned counsel for the applicants has stated that they are maliciously being prosecuted in the present case due to ulterior motive and have apprehension of their arrest. They have nothing to do with the said offence as alleged by the prosecution. Learned counsel has further stated that the present case is a counterblast to FIR No.113 of 2019 which was instituted by the applicant against the complainant and his wife on 14.11.2019. There are several cases of N.I. Act pending against the complainant, as such, he is a professional person and is used to filing frivolous complaints against innocent persons including the applicants. Learned counsel has further stated that a petition u/s 482 Cr.P.C. No. 16669 of 2023 filed by the applicants before this Court was decided vide order dated 18.07.2023 and he is a bonafide person.
6. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegations made against them. The circumstances which, as per counsel, led to the false implication of the applicants have also been touched upon at length. It is further submitted that

the applicants have no criminal history as two more FIRs have been instituted against them and the closure report has been filed in it which has been mentioned in para-27 of the affidavit annexed with the anticipatory bail application. In case, the anticipatory bail application of the applicants is allowed, they will not misuse the liberty and shall cooperate with trial.

7. On the other hand, learned counsel for the informant as well as learned A.G.A. have vehemently opposed the prayer for grant of anticipatory bail on the ground that there is a criminal history of two cases assigned to the applicants and they have not annexed any order regarding them being on bail or having been exonerated or not being wanted in the said cases. The applicants having filed a petition u/s 482 Cr.P.C. which was disposed of by a detailed order dated 18.07.2023. Learned AGA has also placed much reliance upon the judgement of this Court passed in *Shivam Vs. State of U.P. and Another*, reported in *AIR Online 2021 All 484* and pointed out the relevant para-43 of the said judgement. Learned AGA has also stated that the proceedings u/s 82 Cr.P.C. are completed against the applicants on 06.10.2023, as such, they are not entitled for bail.

8. Considering the rival submissions advanced by the learned counsel for the parties, the case law of *Shivam (Supra)* and also the fact of the case that already the proceedings u/s 82 Cr.P.C. are completed against the applicants on 06.10.2023 and they have already failed in the petition u/s 482 Cr.P.C., I do not find it a fit case for granting anticipatory bail to the applicant.

9. In view of the above, the present anticipatory bail application is found devoid of merits and is, accordingly, **dismissed**.

(Justice Krishan Pahal)

Order Date :- 30.10.2023
Siddhant