

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11441 of 2023

Applicant :- Vikash Vishwakarma

Opposite Party :- State of U.P.

Counsel for Applicant :- Dheeraj Kumar, Atul Kumar Singh

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 application has been moved on behalf of the applicant **Vikash Vishwakarma** seeking anticipatory bail in Complaint Case No. 2990 of 2023, under Sections 18/27 Drugs and Cosmetics Act, Police Station Jaitpura, District Varanasi.
3. It is alleged in the F.I.R. that the Drug Inspector made a raid at the firm, M/s Vikash Pharma, which belongs to the present applicant and a huge quantity of medicines, which were intended not for sale, were recovered and in the FSL report, the said medicines were found not of standard brand but spurious. Criminal complaint was filed against the present applicant.
4. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of his 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 the prosecution story is totally false and frivolous. It is next submitted that the medicines said to be recovered from the firm of the applicant, were not mis-branded and they were not intended for sale and were in the category of physician's sample. It is further submitted that there is no independent witness of the said offence. It is also submitted that the applicant is a respectable man, having no criminal history to his credit and as such, he is entitled for anticipatory bail. It has been submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.
5. Per contra, learned A.G.A. opposed the prayer for anticipatory

bail and it has been submitted that the samples of the medicines retrieved from the firm of the applicant, were sent for forensic test and the same have been found spurious and it has been clearly mentioned in the FSL report that the medicines were not of standard brand. It is further submitted that since the medicines were found spurious, the offence is also more serious and heinous.

6. The present, is a complaint case. *In Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1*, the Hon'ble Apex Court has settled the controversy finally by holding the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

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.

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.

7. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

8. The application is **rejected**.

Order Date :- 3.11.2023

Shivangi