

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11559 of 2023

Applicant :- Govind Prasad Gupta And Another

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Anil Kumar Srivastava

Counsel for Opposite Party :- G.A., Bhavya Sahai

Hon'ble Nalin Kumar Srivastava, J.

1. Counter affidavit filed on behalf of informant in the court today is taken on record.
2. Heard learned counsel for the applicants, learned counsel for the informant, learned A.G.A. for the State and perused the record.
3. Apprehending their arrest in Case Crime No. 583 of 2023, under Sections 471, 468, 467 and 420 I.P.C., Police Station Tajganj, District Agra, the applicants - Govind Prasad Gupta and Smt. Shashi Gupta have filed this anticipatory bail application seeking anticipatory bail in the aforesaid crime number.
4. The land of the informant was illegally sold without any right and title by co-accused Nenuwa in favour of the applicant. The first information report was lodged on 8.7.2023. The investigation started, which is still going on.
5. Learned counsel for the applicants submits that that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. They have been falsely implicated in this matter. Allegations levelled against the applicants are false. Investigation is going on into the matter. It is further submitted that applicants are the bonafide purchaser. After verifying the revenue record and finding that co-accused Nenuwa was the tenure holder of the land the applicants have purchased the land after payment of sale consideration amount. The impugned sale deed is a registered document and on the basis of execution of the said sale deed co-accused Nenwa was the owner and he was having right and title to dispose of that land by way of sale deed. He next submits that no

cheat or fraud was committed by the applicants. Present matter relates to civil nature and a civil suit between the parties is pending. Applicants have no criminal history. In case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

6. Per contra, learned counsel for the informant as well as learned A.G.A. have vehemently opposed the prayer for anticipatory bail and submitted that co-accused Nenuwa, who is the vendor of the land in question was not recorded tenure holder and after playing some fraud with intention to grab the property of the informant the sale deed has been procured in collusion with a criminal conspiracy by the applicants. They further submits that co-accused Nenuwa has no right and title and the applicants were fully aware about this fact but despite knowing the said fact they fraudulently grabbed the land in question, hence they are not entitled for anticipatory bail. In support of his contention, learned counsel for the informant has placed reliance upon paragraph nos. 25 to 28 of the judgment of Hon'ble Apex Court in the case of *Pratibha Manchanda and Another vs. State of Haryana and another*, 2023 Live Law (SC) 514 : 2023 INSC 612, which is hereunder :-

"25. Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organized criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress.

26. While we do not wish to comment further on this issue, we believe it is necessary to foil any trace of organised crime perpetrated by land mafia, through an unimpaired and unobstructed investigation.

27. It is inarguable that the cancellation of bail should be done only for substantial and compelling reasons, however, setting aside an erroneous bail order is altogether different from cancelling bail. This Court does not intend to interfere with the judicial discretion exercised by the High Court in granting bail to an accused as a standard practice. However, it is essential to ensure that all the material facts are

brought on record and thereafter only the discretionary jurisdiction is exercised in accordance with the fundamental principles of anticipatory bail laid down in various decisions over time by this Court.

28. It is immaterial that the genuineness of the 1996 GPA is already sub-judice before the Civil Court in the civil suits pending between the parties. The appellants, owing to their age and residential status, cannot be expected to await indefinitely for the outcome of these civil proceedings. Regardless, the pendency of these cases does not estop the issues of forgery and fabrication being considered in the course of criminal investigation. The facts of the case speak for themselves and an element of criminality cannot be ruled out at this stage. Whether or not the alleged offences were committed by Respondent No. 2 and his co-accused in active collusion with each other can be effectively determined by a free, fair, unhampered and dispassionate investigation. In the peculiar facts and circumstances of this case, custodial interrogation of not only Respondent No. 2 but all other suspects is, therefore, imperative to unearth the truth. Joining the investigation with a protective umbrella provided by pre-arrest bail will render the exercise of eliciting the truth ineffective in such like case. We are, as mentioned, also skeptical, suspicious and incredulous about the verification process of the 1996 GPA carried out by the SubRegistrar, Kalkaji, New Delhi. Hence, the conduct of the officials of Sub-Registrar Office, Kalkaji, New Delhi is also required to be examined to take the investigation to its logical conclusion."

7. From the perusal of the FIR and the documents annexed with counter affidavit, it appears that the sale deed in question was executed in the year 2017 when the co-accused Nenuwa was the recorded tenure holder but later on in the year 2021 his name was cancelled from the revenue record. It also reflects from the record that after payment of requisite sale consideration amount the sale deed has been executed.

8. The case law relied upon by the informant does not go to help him at this stage as in the present case, the vendor co-accused Nenuwa was the recorded tenure holder on the date of execution of sale deed and it can not be concluded at this stage that even if it was a manipulated entry, it was committed by the present applicants or they have any knowledge regarding this.

9. 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.

10. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

11. 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 the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

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

13. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court on his furnishing a personal bond of Rs.50,000/- with two

sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(ii) 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/her from disclosing such facts to the Court or to any police office.

(iii) The applicant shall not leave India without the previous permission of the Court and if he has passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

14. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 30.10.2023

Faridul