

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11563 of 2023

Applicant :- Sachin Bhatnagar

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

Counsel for Applicant :- Kamlesh Kumar Dwivedi, Saurabh Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicant, learned Additional Government Advocate for the State, Mr. Monu Upadhyay, learned counsel for the informant and Mr. Rahul Sahai, learned counsel for L & T Finance Limited.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.453 of 2023, under Sections 420, 406, 467, 468, 471 and 120-B IPC, Police Station Teelamod, District Ghaziabad.

3. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case just to harass the applicant in fact no such incident has taken place as alleged in the impugned FIR. The applicant has never committed any offence as alleged in the impugned FIR even the applicant has no concern with the alleged incident. As per version made in the FIR, the sole allegation against the applicant is that at the time of execution of sale deed dated 11.04.2023 executed by one Ms. Shobha Devi @ Shobha Goswami, who has claimed herself as land owner and the applicant is the only marginal witness of the sale deed in question. He further submits that the allegation, regarding conspiracy with regard to the alleged forged sale deed, have been made against co-accused Sanjay Kumar, Anand Kumar Jha and Ms. Shobha Devi @ Shobha Goswami. He

further submits that there was a compromise held between informant Tanuj Kumar Garg and co-accused Sanjay Kumar and in view of the compromise, a cheque amounting to Rs.4 crore was given by co-accused Sanjay Kumar, which was dishonoured, therefor, a legal notice dated 30.06.2023 under Section 138 of Negotiable Instrument Act was sent to the co-accused Sanjay Kumar, Anand Kumar Jha and Ms. Shobha Devi @ Shobha Goswami. He further submits that the informant has sent a sum of Rs.25 lakh in the account of Ms. Shobha Devi by way of R.T.G.S. at the time of agreement. Not a single amount has been deposited in the account of the applicant, hence, the applicant is not the beneficiary at any point of time. The applicant is simply a marginal witness of the sale deed dated 11.04.2023. Prima facie no alleged offence is made out against the applicant. The applicant is having no previous criminal history as has been mentioned in paragraph 8 of the affidavit. He further submits that applicant has apprehension of imminent arrest and in case, the applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

4. Learned A.G.A. as well as learned counsel for opposite party no.2 vehemently opposed the prayer for anticipatory bail of the applicant and have submitted that the applicant is the mastermind of the alleged incident. The applicant in collusion with co-accused persons by way of fraud has siphoned crores of rupees of the informant. Co-accused persons have also issued a cheque amounting to Rs.4 crores, which was dishonoured, therefor, a legal notice under Section 138 of Negotiable Instrument Act was sent to the co-accused Sanjay Kumar, Anand Kumar Jha and Ms. Shobha Devi @ Shobha Goswami. Applicant alongwith co-accused persons have committed forgery as well as cheating against the informant. The

allegations are very serious and keeping in view the seriousness of the allegations made against the applicant, applicant is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

5. In case of **Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694**, it has been held by Hon'ble Supreme Court that while deciding anticipatory bail, Court must consider nature and gravity of accusation, antecedent of accused, possibility of accused to flee from justice and that Court must evaluate entire available material against the accused carefully and that the exact role of the accused has also to be taken into consideration.

6. In **Subramanian Swamy Vs. C.B.I., (2014) 8 SCC 682**, the Constitution Bench of the Hon'ble Supreme Court observed that corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the 1988 Act.

7. In **P. Chidambaram Vs. Director of Enforcement, (2019) 9 SCC 24**, the Apex Court has clearly held that grant of anticipatory bail particularly in economic offences would definitely hamper the effective investigation. In the cases of corruption the custodial interrogation of an accused is necessary because he/she may provide the information leading to discovery of material fact and relevant information.

8. The anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicants have falsely been enroled in the offence. Being an extraordinary remedy, it should be restored to only in a special case.

9. In the present case, the applicant in collusion with co-accused persons have siphoned crores of rupees of the informant by playing fraud. From the perusal of material on record and looking into the facts of the case, prima facie, offence is made out against the applicant. It would be inappropriate to discuss the evidence at this stage because it is likely to influence the trial court.

10. In view of the facts and circumstances of the case, this Court does not find any exceptional ground to exercise its discretionary jurisdiction under Section 438 of the Code of Criminal Procedure to grant anticipatory bail. Therefore, this Court is of the view that the anticipatory bail application has no merit and is liable to be **rejected**.

11. However considering the facts and circumstances of the case, it is directed that in case the applicant appears and surrenders before the court below and applies for grant of regular bail, his application shall be heard and decided expeditiously in accordance with law.

Order Date :- 24.11.2023

Ajeet