

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11554 of 2023**

Applicant :- Raunak Gupta @ Nishant Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Manvendra Singh, Ravindra 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 Raunak Gupta @ Nishant Gupta seeking anticipatory bail in Case No. 3818 of 2016 arising out of Case Crime No.97 of 2014, under Sections 420, 467, 468, 471 IPC and 66 Information Technology Act, Police Station- Badhpur, District- Etawah.
3. In a case of cyber crime a huge amount of money in some installments was got deposited by the informant by playing fraud by unknown person and the money was deposited in various accounts. FIR was lodged on 1.7.2014 and investigation started. Now the charge sheet has been submitted in this matter.
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. The investigation of the case has been completed and charge-sheet has been filed and cognizance has been taken by the Court concerned. It is further submitted that the present applicant has no concern with the alleged crime. The mobile number of the applicant has not been used in the commission of the alleged crime and no money has been deposited in his bank account. He is not named in the FIR and no call has been made to the informant from the mobile number of the applicant. He is respectable person and is entitled for anticipatory bail in this matter. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.
5. Learned A.G.A. opposed the prayer for anticipatory bail. At the

very outset it has been argued that the accused applicant is a proclaimed offender. During course of investigation he never cooperated with the I.O. and that is why charge sheet was submitted against him as an absconder in 2016 and even after submission of the charge sheet the accused applicant never appeared before the Court as reveals from the perusal of the anticipatory bail rejection order dated 23.8.2023 passed by the Sessions Court at Etawah. It is also submitted that process under Section 82 Cr.P.C was served against the applicant in the month of August 2016. An FIR under Section 174(A) I.P.C. was also lodged against the present applicant on 13.9.2016 by the I.O. of the case. Since the applicant is a cronic defaulter and he deliberately avoided the service of the process of the Court and never cooperated with the I.O. of the case or with the trial Court, as such he is not entitled for anticipatory bail.

6. In this matter, it reveals that after completion of investigation, charge sheet has been submitted and cognizance has also been taken by the Court concerned. Summons were issued to the applicant. Since the applicant did not appear before the Court concerned, coercive processes have been issued against him. 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.

7. 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.

8. 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.

9. It appears from a perusal of the record that in this matter after investigation charge sheet has been submitted against the applicant. Summon was issued against him. Since the applicant did

not appear before the Court concerned, punitive actions were taken against him, as he was absconding. Process under Sections 82 and 83 CrPC were issued against him.

10. The conduct of the applicant falls within the ambit of the law promulgated by Hon'ble Apex Court in Prem Shankar Prasad Versus State of Bihar and Another, 2021 SCC OnLine Supreme Court 955. In the facts of the case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it reveals that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order passed by the Magistrate. Only thereafter the accused moved an application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this.

"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

20. In the case of State of Madhya Pradesh v. Pradeep Sharma (Supra), it is observed and held by this court that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr. P.C., he is not entitled to relief of anticipatory bail."

11. In view of the law laid down by the Hon'ble Apex Court, I deem it not a fit case to grant anticipatory bail to the present applicant. Such a person, who does not cooperate in the matter, is not entitled for any relief from this Court by way of granting anticipatory bail. Prayer made in the application is refused.

12. The anticipatory bail application is rejected.

Order Date :- 8.11.2023//Fhd