Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11511 of 2023

Applicant :- Afajal Ali
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Sundeep Shukla
Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Counter affidavit filed on behalf of State is on record. Learned counsel for the applicant does not want to file rejoinder affidavit in this matter.

2. Apprehending his arrest, the present anticipatory bail application has been filed on behalf of the applicant - **Afajal Ali** in Case Crime No.669 of 2022 under Sections 420, 406, 504, 506 I.P.C., Police Station Kairana, District Shamli, with a prayer to enlarge him on anticipatory bail. .

3. Heard learned counsel appearing for the applicant as well as learned A.G.A. appearing for the State and perused the record.

4. It is submitted by the learned counsel for the applicant that vide order dated 18.10.2023, the applicant has been granted interim anticipatory bail by this Court and he has not misused the interim protection granted to him. It is further submitted that charge sheet was submitted in the matter. It is further submitted that no prima facie case is made out against the applicant. No custodial interrogation is required from the applicant. Applicant has no criminal history. He has been cooperative with the investigating agency / trial court. There is no chance of fleeing away of the applicant.

5. Per contra, learned A.G.A. opposed the submission made by learned counsel for the applicant.

6. I have considered the submissions made by learned counsel for the parties and perused the entire record.

7. Although charge-sheet was submitted in this matter, but 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.

8. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

"11. *A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87CrPC that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.*

12. Insofar as the present case is concerned and the general principles under Section 170CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the

circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

9. Since no incriminating material has come against the applicant in the counter affidavit filed on behalf of the State to recall the order dated 18.10.2023 granting interim protection to him in the present anticipatory bail application and the said liberty was not misused by the applicant, therefore, considering the entire facts and circumstances of the case and also the nature of accusation made against the applicant, the present anticipatory bail application is **allowed** and the order dated 18.10.2023 is confirmed and made absolute till end of the trial, on the terms and conditions as mentioned in the order dated 18.10.2023.

Order Date :- 29.11.2023
ss

Digitally signed by :-
SANDEEP SHARMA
High Court of Judicature at Allahabad