

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11534 of 2023**

Applicant :- Rajesh Jaiswal

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

Counsel for Applicant :- Saurabh Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicant- **Rajesh Jaiswal** in Criminal Case No. 576 of 2015, arising out of Case Crime No. 231 of 2014, under Sections 332, 342, 353, 395, 397, 504, 506 IPC, Police Station Raipur, District Sonbhadra.

3. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Charge sheet in the matter has been submitted. It is further submitted that as a matter of fact the police personnel in drunken condition came to the house of the applicant and tried to outrage the modesty of the mother of the applicant and a complaint was also made in this regard. Since the informant in the case is a police personnel, F.I.R. was lodged on false and frivolous grounds and charge sheet has also been submitted. It is further submitted that after submission of the charge sheet the same was challenged by way of Application U/S 482 No. 10361 of 2015 by the applicant and other co-accused persons but however no relief was granted to them by this Court and it was disposed of vide order dated 20.04.2015. It is further submitted that the applicant has no criminal history to his credit. It is also submitted that vide order dated 29.8.2014 the applicant was granted protection along with other co-accused by this Court in Criminal Misc. Writ Petition No. 14816 of 2014 till submission of police report under Section 173(2) CrPC. Injuries caused to the injured persons are simple in nature. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. has opposed the prayer for anticipatory bail. It is vehemently submitted that in the rejection order passed by the Sessions Court, Sonbhadra, it has been specifically mentioned that the order to issue non-bailable warrant and process under Section 82 Cr.P.C. is operative against the present applicant, which denotes that the applicant has declared as proclaimed offender and as such his bail application is not maintainable as well.

5. In this matter, from the perusal of the record it reveals that a police raid was made in connection with illegal activities of the accused persons by holding government food grains and the police personnel were assaulted by the named accused persons including the present applicant. F.I.R. was lodged on 15.6.2014 and after investigation charge sheet has been submitted. A parity has been claimed by the accused applicant on the ground that co-accused Hare Krishna Jaiswal, Ashok Jaiswal and Jai @ Jyee Harijan have been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 Cr.P.C. No. - 10115 of 2023 by order dated 4.10.2023 and the case of the applicant also lies on the same footings but the perusal of the aforesaid order regarding the co-accused persons reflects that no process under Section 82/83 Cr.P.C. was issued against them and they were not declared as proclaimed offenders and at this juncture the case of the present applicant differs from that of the co-accused persons in anticipatory bail Application No. 10115 of 2023. Since the present applicant is a proclaimed offender and no plausible explanation has been offered in this regard, the anticipatory bail application is not maintainable.

6. 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 applicants. Summon was issued against them. Since the applicants did not appear before the Court concerned, punitive actions were taken against them, as they were absconding. Process under Sections 82 and 83 CrPC were issued against them. The conduct of the applicants 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."

10. 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.

11. The anticipatory bail application is rejected.

Order Date :- 7.11.2023

Fhd