

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11635 of 2023

Applicant :- Dilnawaj

Opposite Party :- State of U.P.

Counsel for Applicant :- Sunil Kumar Mishra

Counsel for Opposite Party :- G.A., Satyendra Narayan
Singh, Sushil Kumar Pandey

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the material available on record.
3. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant -**Dilnawaj** in Case Crime No.144 of 2023, under Sections 420, 467, 468, 471, 504, 506 IPC, Police Station - Jansad, District - Muzaffar Nagar.
4. It is alleged in the F.I.R. that a power of attorney was executed by Smt. Rajni in favour of the present applicant in respect of the landed property but subsequently excess land was also sold by the present applicant and the consideration amount was fraudulently taken out and the fraud was also committed with the present applicant and the wrongful gain has been made in favour of the present applicant. An F.I.R. was lodged on 16.06.2023 and investigation started which is still going on.
5. 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. Investigation is going on in the matter. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.
6. It is further submitted that no excess land has been sold by the present applicant on the basis of power of attorney. It is next submitted that as a matter of fact, Rs.11 lakhs in some instalments were given by the present applicant in favour of Smt. Rajni, the

original owner of the land and in lieu of that amount, the land has been sold which is said to be excess land by way of four different sale deeds by the present applicant on the basis of power of attorney. It is further submitted that the power of attorney in favour of the present applicant was executed in the year 2019 and it is admitted fact that no wrongful loss has been caused to the aggrieved Smt. Rajni as she had already sold the land which is said to be an excess land and subsequently the said land is said to be sold by the present applicant. It is next submitted that the matter relates to be civil in nature and an attempt has been made to give it the colour of criminal case. It is next submitted that during investigation, the applicant has been cooperative with the I.O. of the case so far and as such, he is entitled for anticipatory bail.

7. Learned A.G.A. as well as learned counsel for the informant have opposed the prayer and it has been submitted that the land which was already sold by Smt. Rajni was subsequently again sold by the present applicant in favour of her family members and he has obtained wrongful gain in his favour. It is next submitted that the applicant cannot escape the criminal liability as a huge fraud has been committed by him. No civil suit is pending between the parties.

8. In the present case, the investigation of the case is still going on. Prima facie, the matter relates to civil nature and no custodial interrogation is required from the present accused applicant.

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 filing of police report under Section 173(2) Cr.P.C. in the matter.

12. The application is **allowed**.

13. In the event of arrest of the applicant, he shall be released on anticipatory bail 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 interim protection granted to the applicant.

Order Date :- 28.11.2023

Shivangi