

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11620 of 2023

Applicant :- Faizan Saifi

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

Counsel for Applicant :- Mohit Singh, Anil Kumar

Counsel for Opposite Party :- G.A., Abdul Mazeed

Hon'ble Krishan Pahal, J.

1. List has been revised. Supplementary affidavit filed today by the learned counsel for the applicant is taken on record.
2. Heard Sri Mohit Singh, learned counsel for the applicant and Sri Abdul Mazeed, learned counsel for the informant as well as Sri Deepak Kumar Singh, learned A.G.A. for the State and perused the material placed on record.
3. The instant anticipatory bail application has been moved on behalf of the applicant seeking protection in Case Crime No.186 of 2022, u/s 420, 467, 468, 471, 352, 323, 504 of IPC, Police Station- Mainather, District Moradabad, during the pendency of trial.
4. As per prosecution story, the father of the applicant and the informant had purchased a land of which the father of the applicant had 1/3rd of share. The father of the applicant is stated to have entered into an agreement to sale with the applicant, his sister and mother and subsequently sold the said land to the mother and sister of the applicant. No sale-deed was executed regarding the land to the applicant.
5. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. The matter of civil nature has been converted into a criminal one. The civil suit was filed by the informant prior to the institution of the present FIR which is still pending. Learned counsel has further stated that the said agreement to sale has been cancelled by the applicant and the cancellation deed has been filed as Annexure No.1 to the supplementary affidavit filed in Court today. Learned counsel has also stated that the petition u/s 482 Cr.P.C. was not decided on merits rather it was stated that the applicant may file a discharge application and after its disposal, he may apply for bail, as such, the applicant had applied for anticipatory bail as the word "bail" includes "anticipatory bail". The applicant has no criminal history.
6. In support of his contention, learned counsel for the applicant has placed much

reliance upon the judgement of Apex Court passed in *Petition for Special Leave to Appeal (Crl.) No.6791 of 2021, Vinod Kumar Kanaujia & Others Vs. State of Uttar Pradesh & Another*, decided on 09.09.2021 and the said order reads as under:-

"We see no reason to interfere with the impugned judgement and order passed by the High Court dismissing the petition filed by the petitioners herein to quash the charge sheet in exercise of powers under Section 482 of the Code of Criminal Procedure.

Hence, the Special Leave Petition is dismissed.

Pending application(s), if any, shall stand disposed of.

However, considering the fact that earlier also the petitioners were protected from arrest till the filing of the Charge Sheet and in the peculiar facts and circumstances of the case, we direct that if the application for anticipatory bail is filed by the petitioners herein within a period of two weeks from today, in that case the petitioners may not be arrested for a period of four weeks from today.

However, the concerned court to consider the application for anticipatory bail in accordance with law and on its own merits without being influenced by present order of interim protection."

7. Per contra, learned counsel for the informant as well as learned A.G.A. have vehemently opposed the bail application on the ground that the applicant had agitated the provisions of Section 482 Cr.P.C. and failed and the co-accused person Abdul Qayyum has been enlarged on regular bail and not in an anticipatory bail. Learned counsel for the informant has also stated that the present case is covered by para-43 of the judgement of this Court passed in *Shivam Vs. State of U.P. and Another*, reported in *AIR Online 2021 All 484*.

8. After hearing the learned counsel for the parties and taking into consideration the judgement of the Apex Court passed in *Vinod Kumar Kanaujia (supra)* and the judgement of this Court passed in *Shivam (supra)*, this Court is of the view that the rigors of the judgement of *Vinod Kumar Kanaujia (supra)* does not apply to the present case as the said judgement has been passed by specifically mentioning the words "in the peculiar facts and circumstances of the case" and the powers of the High Court stand limited in the light of the judgement of this Court passed in *Shivam (supra)*. Therefore, I do not find it a fit case to grant anticipatory bail to the applicant.

9. The present anticipatory bail application is, accordingly, **rejected**.

(Justice Krishan Pahal)

Order Date :- 28.10.2023

Siddhant