

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11636 of 2023

Applicant :- Smt. Madhu Varshney

Opposite Party :- State of U.P.

Counsel for Applicant :- Ravi Prakash 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 material available on record.
2. This application for anticipatory bail has been filed by applicant - **Smt. Madhu Varshney** in connection with Case No.32103 of 2022 arising out of Case Crime No.136 of 2021, under Section 406 IPC, Police Station Delhi Gate, District Aligarh.
3. The prosecution story, as alleged in the F.I.R., is that Mahadev Trading Company owned by Smt. Megha Mittal wife of Amit Kumar Mittal and Madhu Traders owned by the present applicant Madhu Varshney wife of Dalchandra Varshney have business transactions and the Company of the applicant borrowed goods valuing Rs.15,45,210/- and to repay the same, the present applicant issued a cheque of Rs.2,55,000/-, but subsequently the informant was informed by the bank that before issuance of the aforesaid cheque, the concerned bank account had been closed by the account holder. F.I.R. was lodged on 22.2.2021 and now charge-sheet has been submitted in this matter.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and she has apprehension of her arrest in the above-mentioned case, whereas there is no credible evidence against her. She has been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been submitted. It is further submitted that in the present case, no cheque was issued in favour of the Company of the informant or in her favour personally. Prosecution story is false and concocted. It is further submitted that till 2018, the Companies of the parties were indulged in business transaction with each other, but thereafter no such transaction took place between the two

Companies. It is further submitted that there is no evidence on record that the cheque was issued in favour of the informant or her Company by the applicant personally or through her Company. It is also submitted that the applicant has been cooperative during the course of investigation. It is further submitted that no custodial interrogation is required in this matter from the applicant and as such he is entitled for anticipatory bail.

4. On the other hand, learned A.G.A. opposed the prayer for anticipatory bail and it has been submitted that the cheque was deliberately issued after closure of bank account by the applicant to make a wrongful gain in her favour and wrongful loss to the informant, but however he could not dispute the factual aspect of the matter that during course of investigation, the applicant has been cooperative.

5. In the present case, the offence alleged against the applicant is punishable with the imprisonment for a maximum period of seven years. No criminal history of the applicant has been brought to the notice of the Court. Applicant has been cooperative during investigation.

6. Although charge-sheet has been submitted in the present 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 law on the subject finally by holding that 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.

7. Hence, 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 end of the trial in the matter.

8. The anticipatory bail application is **allowed**.

9. In the event of arrest of the applicant in the aforesaid case crime, she shall be released on anticipatory bail till end of the trial on her furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

(i) The applicant shall make herself available before the court concerned on the date fixed in the matter;

(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 officer;

(iii) The applicant shall not leave India without the previous permission of the Court and if she has passport, the same shall be deposited by her before the S.S.P./S.P. Concerned.

10. In case of default of any of the conditions, same may be a ground for cancellation of protection granted to the applicant.

Order Date :- 26.10.2023

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