

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11574 of 2023

Applicant :- Sanjeev Kumar Jain And 3 Others

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

Counsel for Applicant :- Lalit Kumar Shukla

Counsel for Opposite Party :- G.A.,Dr. Akhilesh Kumar

Hon'ble Shekhar Kumar Yadav,J.

1. Rejoinder affidavit filed today in the Court, the same is taken on record.

2. Heard Sri Lalit Kumar Shukla, learned counsel for the applicants, Sri Akhilesh Kumar, learned counsel for the informant and learned Additional Government Advocate for the State as well as perused the material available on record.

3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.267 of 2023, under Sections 419, 420, 406, 467, 468, 471, 120-B, 295-A I.P.C., P.S.- Atmadaulla, District- Agra.

4. Learned counsel for the applicants submitted that the applicants have been falsely implicated in the present case. He submitted that the present FIR has been lodged against the applicants under Section 295 IPC without getting sanction by the Central Government, State Government and District Magistrate. He further submitted that earlier, the applicants have also approached this Court in a writ petition being Criminal Misc. Writ Petition No. 9460 of 2023 (Gaurav Kumar Jain and 7 others Vs. State of U.P. and 2 others), wherein interim protection has been granted by the co-ordinate Bench of this Court vide order dated 26.6.2023. The applicants are having no previous criminal history as has been mentioned in paragraph 40 of the affidavit. Learned counsel for the applicants further submitted that applicants have apprehension of imminent arrest and in case, applicants are released on anticipatory bail, they will not misuse the liberty and would co-operate with the trial.

5. Sri Akhilesh Kumar, learned counsel for the informant and learned A.G.A. have opposed the prayer for anticipatory bail of the applicants. Learned A.G.A. submitted that as per case diary, no sanction has been granted to lodge the FIR. Learned A.G.A. has drawn attention of this Court towards Section 196 Cr.P.C., which reads as under:-

"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.-

(1) No Court shall take cognizance of- (a) any offence punishable under Chapter VI or under section 153A, of Indian Penal Code, or Section 295 A or sub section (1) of section 505] of the Indian Penal Code or (b) a criminal conspiracy to commit such offence, or (c) any such abetment, as is described in section 108A of the Indian Penal Code, except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of- (a) any offence punishable under section 153B or sub- section (2) or sub- section (3) of section 505 of the Indian Penal Code, or (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate."

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicants and without getting sanction provided under Section 196 Cr.P.C. FIR under Section 295A IPC has been lodged, hence, the applicants are directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98**. The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

7. In the event of arrest, the applicants shall be released on anticipatory bail. Let the applicants- **Sanjeev Kumar Jain, Vinod Kumar Jain, Achin Jain and Rupesh Jain**, involved in the aforesaid case crime be released on anticipatory bail on furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(i) The applicants shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation.

(ii) The applicants 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 them from disclosing such facts to the Court or to any police officer.

(iii) The applicants shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(iv) The applicants shall surrender their passport, if any, to the concerned Court forthwith. Their passport will remain in custody of the concerned Court.

(v) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicants.

(vi) In case, the applicants misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.**

(vii) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of their bail and proceed against his in accordance with law.

8. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

9. With the aforesaid observations/ directions, the application stands **allowed**.

Order Date :- 7.11.2023

Krishna*