

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12250 of 2023

Applicant :- Balmiki And 11 Others

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

Counsel for Applicant :- Vijay Kumar Mishra,P.K. Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicants as well as learned A.G.A. for the State and perused the material available on record.

2. Present Anticipatory Bail Applications have been filed with the prayer to grant anticipatory bail to the applicants -**Balmiki, Sanjay Kumar Singh, Prem Kumar, Lal Bahadur, Hoshila Yadav, Jaylal Verma, Chandrabhan Singh, Kedarnath Singh, Nandji, Harshdev, Ganesh Ram & Awadhnath Ram** in Case Crime No.158 of 2018, under Sections 409, 201 IPC, Police Station - Gadwar, District - Ballia.

3. As per allegations in the F.I.R. lodged by informant- Inspector, Ramashankar Singh Yadav that Secretary, Gram Panchayat of 58 villages of District- Ballia were issued letters and reminders for handing over relevant papers/registers in connection with an inquiry instituted with regard to irregularities committed in implementation of 'Sampurna Gramin Rojgar Yojana' between the year 2002 and 2005 in District Ballia. It is alleged in the F.I.R. that the relevant papers were being maintained by concerned Secretary, Gram Panchayat but they failed to produce and place them before the authorities concerned.

4. It has been submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. Investigation is going on in the matter. In case applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

5. It is submitted on behalf of the applicant the he retired from the post of Secretary, Gram Panchayat- Gurgujpur on 03.12.2010. An

F.I.R. was registered about 8 years after his retirement on 24.08.2018 against different office bearers of about 58 Gram Panchayats of District- Ballia alleging that they did not hand over the concerned files with the intention to derive benefits from them. In fact the applicant handed over all the registers and papers just before his retirement. It is next submitted that co-accused, Parashuram Ram has already been granted anticipatory bail by the coordinate Bench of this Court vide order dated 02.03.2023 in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No.10340 of 2023, therefore, the accused applicant is also entitled for anticipatory bail as the case of the accused applicant is similar to that of co-accused.

6. Learned A.G.A. opposed the prayer for anticipatory bail.

7. Undisputedly, this F.I.R. was registered in the year 2018 and the matter is under investigation. The accused-applicant has placed one document, which prima-facie shows that he handed over all the registers/papers under his charge on a charge list.

8. *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.

9. *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.

10. Considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants 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 applicants till filing of police report under Section 173(2) Cr.P.C. in the matter.

11. The application is **allowed**.

12. In the event of arrest of the applicants, they shall be released on anticipatory bail on their 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 applicants shall make themselves available for interrogation by a police officer as and when required.

(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 office.

(iii) The applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

13. 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 applicants.

Order Date :- 28.11.2023

Shivangi