

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11796 of 2023

Applicant :- Subash Chand Chauhan

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

Counsel for Applicant :- Bishram Tiwari

Counsel for Opposite Party :- G.A., Sugendra Kumar Yadav

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for applicant, learned counsel for informant, learned A.G.A. for State and perused the record.
2. Apprehending his arrest in Case Crime No. 278 of 2023, under Sections 389, 420, 468, 120-B I.P.C., Police Station- Barhaj, District- Deoria, the applicant- **Subash Chand Chauhan** has filed this anticipatory bail application seeking anticipatory bail in the aforesaid crime number.
3. Some obscene videos and photographs relating to the victim of the case were procured by the accused persons, on the basis of which the named three accused persons including the present applicant started blackmailing him and a huge amount of more than Rs. 7,54,000/- were grabbed from the informant. FIR was lodged on 15.08.2023 and investigating started, which is going on.
4. Learned counsel for applicant submitted that applicant is innocent and has been falsely implicated in this matter. It is further submitted that the present applicant absolutely no role in the alleged crime. It is further submitted that no mobile conversation ever took place between informant/victim and the present applicant. It is also further submitted that there is no CDR available on the record nor any such CDR has been collected by the I.O. during investigation. It is further submitted that no money transfer has taken place in favour of the present applicant either in cash or through bank transaction. It is further submitted that earlier Criminal Misc. Writ Petition No. 13352 of 2023 was moved by the applicant but however, he did not succeed to get any relief and it was dismissed by this Court vide order dated 23.08.2023. It is further submitted that applicant is cooperating with the investigation. It is further submitted that applicant has no criminal antecedent to his credit and he is entitled for anticipatory bail.

5. Per contra, learned A.G.A. and learned counsel for informant

vehemently opposed the anticipatory bail and it has been argued that it is a case of criminal conspiracy wherein all named accused persons anyhow managed to procure obscene video and photographs of the informant with co-accused Sunita Yadav showing that in compromising position. It is further submitted that the huge amount of money has been grabbed by blackmailing the informant and the present applicant is mastermind of the whole crime and he is not entitled for anticipatory bail.

6. In the present case no money transfer has taken place through RTGS or Electronic transaction in favour of the applicant and at this stage there is no CDR on record. The applicant has no criminal history to his credit.

7. 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.

8. 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.

9. 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 the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

10. The anticipatory bail application is **allowed** accordingly.

11. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court 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.

12. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

Order Date :- 28.10.2023

Sharad/-