

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11733 of 2023**

Applicant :- Abhinav Kumar

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

Counsel for Applicant :- Chhaya Gupta, Sujeet Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard Sri Sujeet Kumar, learned counsel for the applicant as well as learned A.G.A. for the State and also perused the record.
2. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 149 of 2022, under Sections 420 and 406 IPC and Section 66D of the Information Technology (Amendment) Act, 2008, Police Station Civil Lines, District Kanpur Aligarh, with a prayer to enlarge him on anticipatory bail.
3. The informant of the case invested certain amount in an online learning app on persuasion of the present applicant for the better education of his kids. Subsequently, when he was not satisfied with the online app, he demanded his money back but did not get it. Thereafter, an FIR was lodged and now charge-sheet has been submitted.
4. It is submitted by the learned Counsel for the applicant that applicant is innocent and has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. It is further submitted that the present applicant is posted only as a Business Development Associate in the Quality Tutorials Private Limited Company and he is not the superior authority in the said Company. It is further submitted that, as a matter of fact, the present applicant, by way of full and final settlement letter, had already resigned from the company *vide* letter dated 09.02.2022, which was finally accepted on 06.05.2022 by the Company. It is next submitted that no money has been deposited or transferred in the bank account of the present applicant by way of cheque/R.T.G.S./electronic transfer. It is further submitted that the applicant has no criminal antecedents. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the

liberty and shall cooperate with trial.

5. *Per contra*, learned A.G.A. has vehemently opposed the prayer for grant of anticipatory bail and submitted that it was the present applicant on whose persuasion an amount valuing more than one lac was invested by the informant for the education of his kids but when he was not satisfied with the same and demanded his money back, the Company grabbed his money. The present applicant was actively involved in the commission of the crime. It is further submitted that during course of investigation, after collecting ample evidence, charge-sheet has been submitted against the applicant.

6. In the present matter, the applicant is having no criminal antecedent. No money transaction has been made in his bank account. After submission of charge-sheet no custodial interrogation is required. Hence, on due consideration to the arguments advanced by the learned counsel for the parties and in view of the law laid down by the Apex Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**", the applicant is entitled to be granted anticipatory bail in this case.

7. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is **allowed**.

8. In the event of arrest of the applicant, **Abhinav Kumar** involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

i. that the applicant shall make himself available for interrogation by a police officer as and when required;

ii. that 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;

iii. that the applicant shall not leave India without previous permission of the court;

iv. that the applicant shall not tamper with the evidence during the

trial;

v. that the applicant shall not pressurize/ intimidate the prosecution witness;

vi. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

9. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

10. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 27.10.2023

Vijay