

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12090 of 2023

Applicant :- Islam Muhammad

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

Counsel for Applicant :- Mayank Krishna S Chandel, Vinod
Kumar Chandel

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant - **Islam Muhammad** seeking anticipatory bail in Case Crime No. 0113 of 2023, under Sections 457, 380, 411 IPC, Police Station Kaptanganj, District Azamgarh.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. It is submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. It is further submitted that the applicant is a small merchant and he is engaged in the business of sale and purchase of wheat. He is not concerned with the wheat stolen from the shop of the informant. No wheat has been recovered from the shop of the applicant and the recovery memo prepared in this regard is a forged and fabricated document. After completion of investigation, charge sheet has been submitted in the matter and the applicant has been cooperative with the Investigating Officer. It is also submitted that during investigation Criminal Misc. Anticipatory Bail Application No. 6874 of 2023 was moved by the present applicant wherein anticipatory bail was granted to him till submission of police report under Section 173(2) CrPC by this Court vide order dated 22.6.2023. It is also submitted that if the prosecution case is taken as it is, the recovery has been made and now no custodial interrogation is required. Applicant has no criminal history to his credit. No process under Sections 82 and 83 CrPC has been issued against the applicant and the applicant has not been declared absconder. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that the stolen wheat has been recovered from the shop of the present applicant and the witnesses of the same vicinity have supported the prosecution version in this regard.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. From the perusal of the record it reveals that some wheat was stolen from the shop of the informant, which was sold in the shop of the present applicant. F.I.R. was lodged on 11.5.2023 and investigation started which culminated into charge sheet. It also reveals that the Investigating Officer did not require any custodial interrogation of the applicant during investigation and now after submission of charge sheet no custodial interrogation is required. The applicant has not misused the liberty given to him during investigation.

7. 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.

8. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory bail to the applicant till the end of trial.

9. The application is **allowed** accordingly.

10. In the event of arrest of the applicant, he shall be released on anticipatory bail on his 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 himself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(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.

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

Order Date :- 3.11.2023

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