

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11917 of 2023

Applicant :- Vimal Kumar Sharma

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

Counsel for Applicant :- Daya Shanker Pandey

Counsel for Opposite Party :- G.A.,Shivam Tripathi

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Daya Shanker Pandey, learned counsel for the applicant, Sri Shivam Tripathi, learned counsel for the informant and Sri Sunil Kumar, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.449 of 2023, registered under Sections 420, 467, 468, 471, 475 I.P.C. at Police Station-Modi Nagar, District- Ghaziabad with a prayer to enlarge him on anticipatory bail.
4. As per prosecution story, the applicant is stated to have taken Rs.5 lakh from the informant on 8.11.2011 to pay it within a period of six months at the interest rate of 4% per month. Subsequent to it, the applicant is stated to have taken additional amount of Rs.4.25 lakhs in April, 2012 on the pretext that he shall invest them in business of selling batteries and the applicant is stated to have not returned it as well. The applicant is stated to have transferred an amount of Rs.17,500/- to the account of the informant and given Rs.2500/- in cash. In all Rs.20,000/- were paid to the informant. The applicant had usurped the money of the informant and the matter was once settled between the parties and the applicant had issued two cheques to the informant which were dishonored at the bank.
5. It is further alleged that the matter was settled on 13.4.2014 and the said cheques were again deposited with the bank and were dishonored, as such, the informant had instituted a case under Section 138 NI Act against the applicant as Complaint Case No.1394 of 2015 in which the applicant is on bail. Subsequent to

it, the applicant got instituted an FIR against the informant on 9.6.2015 that he had stolen his cheques on the basis of fake receipt of the police station, as such, the present FIR has been instituted by the informant on 15.8.2023.

6. Learned counsel for the applicant has stated that he has been falsely implicated in this case. In the said FIR instituted by the applicant the police was pleased to file closure report but on the basis of protest petition filed by the applicant the informant has been summoned. The present FIR is just to nullify the said case. The present case has been instituted in spite of the case under Section 138 NI Act being pending. Learned counsel has further stated that the applicant has been subjected to double jeopardy and the present FIR is hit by Section 300 Cr.P.C.

7. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. The applicant has apprehension of his arrest. Learned counsel has stated that the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

8. Per contra, learned counsel for the informant and learned A.G.A. have vehemently opposed the anticipatory bail application on the ground that the applicant has usurped an amount of Rs.16.25 lakhs of the informant which is due towards him, but they could not dispute the fact that the said complaint case is still pending regarding dishonoring of the said cheques.

9. After hearing learned counsel for the parties and taking into consideration that there are litigations pending between the parties and already regarding the said cheque of the amount of Rs.16.25 lakh a criminal case under Section 138 NI Act is pending coupled with the fact that applicant has no criminal history to his credit, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "***Sushila Aggarwal Vs. State (NCT of Delhi)***, (2020) 5 SCC 1". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

10. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Vimal Kumar Sharma** be released forthwith in the aforesaid case crime (supra)

on anticipatory bail till the conclusion of trial on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (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 the previous permission of the court;
- (iv). that in case charge-sheet is submitted 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;
- (vii). that in case of breach of any of the above conditions the court concerned shall have the liberty to cancel the bail.

11. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 16.11.2023

Vikas

[Krishan Pahal, J.]