Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11777 of 2023

Applicant :- Mohd Asmar
Opposite Party :- State Of U.P. And 2 Others
Counsel for Applicant :- Satyendra Narayan Singh,Vikas Singh
Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

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

2. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant -**Mohd Asmar** in Case Crime No.225 of 2023, under Sections 419, 420, 467, 468, 471, 120-B IPC, Police Station - Saraimeer, District - Azamgarh.

3. The F.I.R. was lodged on 08.08.2023 against 14 named accused persons, who had been allegedly the members of a Hawala gang and investigation started, which is still going on.

4. It has been 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. Investigation is going on in the matter. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. It is further submitted that the accused applicant has absolutely no concern with the alleged offence. His name has came into light on the basis of confessional statement of co-accused, Belal Akbar, who is also a stranger to the present applicant. It is further submitted that the applicant has no account in Jan Sewa Kendra. It is next submitted that he is not indulged in any money transaction as alleged in the F.I.R. It is further submitted that except the confessional statement of co-accused, Belal Akbar, which was made in the police custody, there is no evidence at all against the present applicant. It is further submitted that the applicant is cooperating with the investigation of the case and as such, he is entitled for anticipatory bail.

6. Learned A.G.A. has vehemently opposed the prayer of bail. However, he could not dispute the factual matrix of the matter at this stage as submitted by learned counsel for the applicant.

7. In the present case, although the applicant is named in the F.I.R. but his name has came into light on the basis of confessional statement of co-accused, Belal Akbar made in the police custody.

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, llikelihood 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 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 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 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 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.

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 applicant.

Order Date :- 28.10.2023
Shivangi

Digitally signed by :-
SHIVANGI YADAV
High Court of Judicature at Allahabad