Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 11763 of 2023

Applicant :- Amit Agarwal
Opposite Party :- State of U.P.
Counsel for Applicant :- Amit Saxena,Sr. Advocate
Counsel for Opposite Party :- G.A.,Yashonidhi Shukla

Hon'ble Nalin Kumar Srivastava,J.

1. Crl. Misc. Exemption Application is **allowed**.

2. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Amit Saxena, learned counsel for the applicant, Shri Gopal Swaroop Chaturvedi, learned Senior Advocate assisted by Shri Prashant Vyas, learned counsel for the informant, learned A.G.A. for the State and perused the material available on record.

3. Apprehending his arrest in Case Crime No.77 of 2023, under Sections 389, 406, 409, 506, 120-B IPC, Police Station Kohna, District Kanpur Nagar, the applicant - **Amit Agarwal** has filed this anticipatory bail application seeking anticipatory bail in the aforesaid crime number.

4. At the very outset, it was brought to the notice of this Court that this anticipatory bail application has been filed directly before this Court without having any rejection order from the concerned Sessions Court. In this connection, learned Senior Counsel appearing for the applicant has drawn the attention of the Court to the averments made in paragraphs 50 and 52 of the affidavit annexed with the present anticipatory bail application wherein it has been elaborated that the informant and other Directors of the Group are the owners of one of the India's largest digital house known as Dainik Jagran and since they are highly influential and politically well connected persons, the applicant is being continuously threatened for dire consequences at their behest. The applicant has firm belief that if he appears in the District Court, Kanpur Nagar for filing anticipatory bail application, he would be arrested by the police in the Court premises itself because the police is working under the influence of the informant and his Company and that is why the present anticipatory bail application is being filed directly before the High Court.

5. Reliance in this regard has been placed on the decision of Full Bench consisting five Judges of this Court in the case of **Ankit Bharti vs. State of U.P. and another, 2020 (3) ADJ 165 (F.B.)** wherein the Full Bench has discussed on the issue of concurrent jurisdiction for approaching at the first instant for anticipatory bail before High Court or Session Court and held that there must be compelling or special circumstances entitling a party to directly approach the High Court for grant of anticipatory bail.

6. Learned senior counsel appearing for the informant has made a contention that for filing an anticipatory bail application the party is not required to appear personally in the Court premises and for this reason the ground taken in paragraph 50 & 52 of the affidavit annexed with the anticipatory bail application is not sufficient to make any immunity in favour of the applicant to move anticipatory bail application directly to the High Court.

7. Contending the same it has been argued by the learned senior counsel that to move an anticipatory bail application filing of affidavit by the party is necessary and that is why the personal presence of the party is required in the Court premises for filing an application for grant of anticipatory bail application.

8. The reason disclosed in paragraphs 50 & 52 of the affidavit filed in support of the anticipatory bail application and as stated by the learned counsel for the applicant, in the opinion of the Court, comes within the category of a special reason / circumstance under which the applicant may be permitted to move anticipatory bail application directly to this High Court without having any rejection order from the Court of Sessions. The reasons for filing this anticipatory bail application directly before this Court is sufficient to the satisfaction of the Court. The present application is well maintainable before this Court and is being heard as such.

9. With an ulterior motive to deprive the informant for voting through Demat account, the SPFL Securities Limited Company, which is owned by the present applicant and two other co-accused persons, did not perform the data updation work and F.I.R. was lodged on 22.8.2023 and investigation started, which is going on.

10. It is submitted by the learned counsel for the applicant that the applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. He has been been falsely implicated into this matter. Allegations levelled against the applicant are false. Investigation is going on into the matter and the applicant is cooperating with the

investigation. It is further submitted that the Board of Directors of JMNIPL Company in its meeting on 14.7.2023, removed the earlier authorized signatory Mahendra Mohan Gupta and Dhirendra Mohan Gupta and Sanjay Gupta were nominated as new authorized signatories. It is further submitted that the present applicant had nothing to do with that, but the data updation work was not performed because of certain lacunas in the aforesaid proceedings to which the attention of the present applicant and other co-owners of SPFL Securities Ltd. Company was drawn and in this regard certain e-mails were also sent by both the sides. As a matter of fact, the applicant was given certain time to perform the specified work, but before the expiry of that period, F.I.R. was lodged. Admittedly the matter is still pending between the parties in NCLT and is subjudice. The applicant has absolutely made no embezzlement of any fund. It is further submitted that co-accused Prakhar Jain has already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 11790 of 2023 by order dated 2.11.2023.

11. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been vehemently submitted that omission to the work of data updation was a deliberate criminal act on the part of the applicant and other co-accused persons with a motive to cause loss to the informant and his Company. It was the duty of the Company of the applicant to perform the date updation work properly and he was very well aware of the fact that this criminal act on his part may cause a huge damage to the work, business and credibility of the Company of the informant and keeping in view the seriousness of the offence, the applicant is not entitled for anticipatory bail.

12. In the present matter, investigation is still gong on and the applicant is said to be cooperative with the investigation so far. No criminal antecedent of the applicant has been brought to the notice of this Court at this stage.

13. 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.

14. 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.

15. 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.

16. The anticipatory bail application is **allowed**.

17. 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.

18. 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 :- 29.11.2023
Fhd

Digitally signed by :-
FAHAD NIYAZ
High Court of Judicature at Allahabad