

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11909 of 2023

Applicant :- Mohammad Naseem And 5 Others

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

Counsel for Applicant :- Anwar Hussain

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. Heard Sri Anwar Hussain, learned counsel for the applicants and Sri Deepak Kumar Singh, learned A.G.A. for the State and also perused the material available on record.

2. The present anticipatory bail application has been filed on behalf of the applicants in Case Crime No. 180 of 2012, under Sections 147, 148, 149, 307, 336, 337 & 353 of IPC read with Section 7 of Criminal Law Amendment Act, Police Station South, District Firozabad, with a prayer to enlarge them on anticipatory bail.

3. At the very outset, learned counsel for the applicants has claimed parity with the co-accused Ajad Alias Alla, who has already been granted anticipatory bail by this Court in Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. 2473 of 2023 vide order dated 16.08.2023. Since the case of the applicants is at par with the co-accused person, who has already been granted anticipatory bail, the applicants are also entitled for the same on the ground of parity. The applicants have no criminal history. The doctrine of *stare decisis* is applicable to the present case as the co-accused persons have been acquitted in it.

4. The prayer for anticipatory bail has been vehemently opposed by learned AGA. However, the aforesaid factual aspects of the parity to the co-accused and also of no criminal history assigned to the applicant, has not been disputed by him.

5. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the judgement passed by this Court in *Nanha S/o Nabhan Kha vs. State of U.P.*, 1993 Cr.L.J. 938 and the judgement passed by the Apex Court in *Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation*, MANU/SCOR/22410/2021, without expressing any opinion on the merits of the case, the Court is of the view that the applicants are entitled to be granted anticipatory bail in this case.

6. 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 is **allowed** on the ground of parity.

7. In the event of arrest of the applicants, **Mohammad Naseem, Mohammad Shadab, Imran, Javid Akram @ Gatau, Tofique and Waqil**, 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 applicants shall make themselves available for interrogation by a police officer as and when required;
- ii. that the applicants 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 applicants shall not leave India without the previous permission of the court;
- iv. that in case, the charge-sheet is submitted, the applicants shall not tamper with the evidence during the trial;
- v. that the applicants shall not pressurize/ intimidate the prosecution witness;
- vi. that the applicants shall appear before the trial court on each date fixed unless personal presence is exempted;

8. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the anticipatory bail of the applicants.

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

(Justice Krishan Pahal)

Order Date :- 31.10.2023

Siddhant