

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11857 of 2023

Applicant :- Mohammad Musheer

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

Counsel for Applicant :- Anwar Hussain

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicant- **Mohammad Musheer** in connection with Case Crime No. 180 of 2012, under sections 147, 148, 149, 307, 336, 337, 353 IPC read with Section 7 Criminal Law Amendment Act, P.S. South, District Firozabad.

3. The FIR was instituted against unknown persons for causing disturbance in the locality during the general elections.

4. Learned counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has the apprehension of his arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. The applicant was named in the supplementary charge sheet. Learned counsel has stated that the FIR was instituted by police and the applicant did not have any knowledge of any coercive action having been taken against him. It is next stated that thirty accused persons have been acquitted in S.T. No. 30 of 2016. It is further submitted that an application U/s 482 Cr.P.C. No.26451 of 2014 was moved by the applicant wherein this Court directed to move a discharge application before the court concerned within a period of one month from the date of passing of that order and in all, protection of five months was granted to the present applicant vide order dated 18.07.2014 and subsequently, discharge application was moved under the direction of this Court which was heard and rejected by the court concerned vide order dated 09.07.2019. It is next submitted that against the said order, a criminal revision was preferred but since it was time barred, a delay condonation application was moved and the same was

rejected by the court of CJM, Firozabad vide order dated 03.01.2022. It is also submitted that identically placed co-accused persons, namely, Ajad Alias Alla & Furkaan Ansari have already been granted anticipatory bail by the coordinate Bench of this Court vide orders dated 16.08.2023 & 25.09.2023 in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. Nos. 2473 of 2023 & 9723 of 2023 respectively, therefore, the accused applicant is also entitled for anticipatory bail as the case of the accused applicant is similar to that of co-accused persons.

5. 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. It is further submitted that the accused applicant has no criminal history to his credit. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

6. Learned A.G.A. has opposed the prayer for anticipatory bail.

7. *Although the charge sheet has been submitted in this matter, but in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the controversy finally by holding 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. Hence, 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 conclusion of trial in the

matter.

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

10. In the event of arrest of the applicant in the aforesaid case crime, 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 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.

(ii) The applicant shall not pressurize/ intimidate the prosecution witness.

(iii) The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

(iv) The applicant shall not leave India without prior permission of the Court and if they have passport, the same shall be deposited by him before the S.S.P./S.P. concerned.

11. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicant in accordance with law.

Order Date :- 30.10.2023

Shivangi