

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 11896 of 2023

Applicant :- Nidhi Kashyap @ Nishi Kashyap

Opposite Party :- State of U.P.

Counsel for Applicant :- R.P.S. Chauhan

Counsel for Opposite Party :- G.A.,Dinesh Mishra,Santosh
Kumar Tiwari

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for the informant and perused the record.
2. This application has been moved on behalf of the applicant - **Nidhi Kashyap @ Nishi Kashyap** seeking anticipatory bail in Case Crime No.672 of 2023, under Sections 420, 467, 468, 471 IPC and Section 67 Information Technology Act, Police Station Civil Lines, District Moradabad.
3. Prosecution story as unfolded in the F.I.R. is that the informant is the owner of M/s. Quality Flavour Export Company wherein the present applicant along with her husband, the co-accused Rajiv Kashyap and two other accused persons are employees and when the informant went to abroad for some business work, taking advantage of the situation, the main accused Rajiv Kashyap, in collusion with the present applicant and other co-accused persons, established a new Firm namely, Kanha Chemicals and by using the official e-mail ID of the Company of the informant, they approached the customers of the informant's Company for promoting their own Company whereby a huge monetary benefit was made by the named accused persons and a huge monetary loss was caused to the informant's Company. The official e-mail ID, computers and other peripherals of the informant's Company were used in the commission of the crime causing a huge monetary loss to the tune of Rs.2,14,00,000/- to the informant. F.I.R. was lodged on 8.8.2023 and investigation started, which is going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and she has apprehension of arrest in the

above-mentioned case, whereas there is no credible evidence against her. She has been falsely implicated in this matter. Allegations levelled against the applicant are false. Investigation is going on into the matter. It is further submitted that the present applicant has been roped in this matter on account of being a wife of the main accused Rajiv Kashyap. It is also submitted that the applicant, no doubt, is an employee in the Company of the informant, but she has no concern with the alleged offence. No e-mail has been sent by the applicant to any person/customer or company for the business purpose as alleged in the F.I.R. According to the allegations of the F.I.R., undue advantage has been taken by M/s. Kanha Chemicals, but it has been specifically averred in paragraph 24 of the affidavit filed with the present application that the applicant has no concern with the said Firm and as a matter of fact, only two persons namely Rajiv Kashyap and Anoop Kumar are having partnership in the said Firm, who are the co-accused persons in this case. It is also submitted that the present matter is purely a money dispute, which is civil in nature. It is further submitted that a Crl. Misc. Writ Petition No.13687 of 2023 was moved by the applicant along with the co-accused Rajiv Kashyap before this Court, but no protection was granted by this Court vide order dated 19.9.2023 and the petitioners were given opportunity to seek appropriate protection under the provisions of Code of Criminal Procedure. It is also submitted that the applicant is a lady having no criminal antecedents. She is cooperating with the investigation of the case and as such, she is entitled for anticipatory bail. In case the applicant is granted anticipatory bail, she shall not misuse the liberty of bail and would obey all conditions of bail.

5. Per contra, learned A.G.A. as well as learned counsel for the informant opposed the prayer for anticipatory bail and it has been argued that the applicant has actively participated in the commission of the crime of forgery and fraud committed with the informant, but however he could not dispute this factual aspect of the matter that the applicant is not a partner in Kanha Chemical Company, which has allegedly enjoyed the monetary benefit made on account of playing fraud to the informant of the case.

6. In the present matter, investigation is going on. No criminal history of the applicant has been brought to the notice of the Court. She is cooperating with the investigation.

7. 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.

8. 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.

9. 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.

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

11. In the event of arrest of the applicant in the aforesaid case crime, she shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court on her 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 herself 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 she has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

12. 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 :- 16.11.2023

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