

**Court No. - 73**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 11963 of 2023

**Applicant :-** Shan E Alam

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

**Counsel for Applicant :-** Saumitra Dwivedi, Manish Dubey

**Counsel for Opposite Party :-** G.A., Mohammad Belal

**Hon'ble Nalin Kumar Srivastava, J.**

1. Second supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State as well as learned counsel for the opposite party no.2/complainant and perused the material available on record.
3. Apprehending his arrest, the present anticipatory bail application has been filed on behalf of the applicant - **Shan E Alam** in Case Crime No.559 of 2018 (Complaint Case No.64 of 2019), under Sections 386, 504, 506 I.P.C., Police Station Hapur Dehat, District Hapur, with a prayer to enlarge him on anticipatory bail.
4. A goonda tax of Rs.2 lakh was demanded by the applicant from the informant and he was also threatened for dire consequences. F.I.R. was lodged on 5.11.2018 and after investigation, charge-sheet was submitted into the matter.
5. 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 her. He has been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been filed. It is further submitted that no actual delivery of any property has been made in the present case. Applicant has been cooperative during investigation. After submission of the charge-sheet, the same was challenged by way of filing Application u/s 482 Cr.P.C. No. - 21320 of 2019 wherein an interim protection was granted to the applicant, which was further continued, but however the trial court proceeded with the matter on 3.10.2023 following the dictum laid down by the Hon'ble Apex Court in *Asian*

*Resurfacing of Road Agency Pvt. Ltd and another Vs. Central Bureau of Investigation, (2018) 16 SCC 299* and no interim protection is operative in the aforesaid proceedings in favour of the applicant. It is further submitted that second Application u/s 482 Cr.P.C. No.33289 of 2023 was also moved by the applicant probably under some wrong legal advise, which was dismissed by this Court vide order dated 18.9.2023 without granting any relief to the applicant. It is further submitted that after investigation, a final report was submitted in this matter, as the I.O. could not collect any evidence against the applicant, but however on a protest petition being filed by the informant of this case, the court concerned rejected the final report and the protest petition was treated as complaint and subsequently a summoning order was passed by the court concerned to face trial under sections 386, 504, 506 IPC vide order dated 26.3.2019. It is further submitted that no custodial interrogation is required in this matter from the applicant. Applicant has no criminal antecedents and as such he is entitled for anticipatory bail.

6. Per contra, learned A.G.A as well as learned counsel for the opposite party no.2/complainant opposed the prayer for anticipatory bail and it has been submitted that it is not a case of false implication and after being satisfied with the evidence adduced by the complainant, the court concerned has passed the summoning order against the applicant, but however the learned A.G.A as well as learned counsel for the opposite party no.2 / complainant could not dispute this factual aspect of the matter that no actual delivery of any property has taken place in this matter.

**7. 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. In Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

*"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87CrPC that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.*

*12. Insofar as the present case is concerned and the general principles under Section 170CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."*

9. 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 end of the trial in the matter.

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

11. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till end of the trial 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 make himself available before the court concerned on the date fixed in the matter;

(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 officer;

(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.

12. In case of default of any of the conditions, same may be a ground for cancellation of protection granted to the applicant.

**Order Date :- 23.11.2023**

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