

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 11869 of 2023

Applicant :- Smt. Rajbala

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

Counsel for Applicant :- Udai Chandani

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicant and learned Additional Government Advocate for the State.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.0350 of 2022, under sections 420, 120-B, 467, 468 IPC, P.S. Chhaprauli, District Baghpat, during the pendency of application.

3. As per the prosecution case as mentioned in the FIR lodged by the police that the police went to Village Nangal, P.S. Chhaprauli for investigation on the application given by one Mr Yognder Singh son of Bakhtawar and Yogendra Singh son of Malook Singh, residents of Village Nangal, P.S. Chhaprauli, District Baghpat, who were of the same village. It is alleged that the police informed to the applicant Yogendra Singh, about the application given by Yogendra Singh to higher authorities, then the applicant Yogendra Singh told that he does not have any information about the said complaint/application nor he had given any such complaint. It is further alleged that on thorough interrogation, the applicant Yogendra told that about 01 year ago, one Sharanveer son of Harkhayal, resident of his village, along with 04 other persons came to his house in a white Colored Scorpio car and the four persons along with him were from village Tikri, police station Doghat. The four said persons narrated him the involvement of applicant (Rajbala) in the Paramveer Tugana murder case and asked him to give an affidavit that at the time of Paramveer murder case that happened in Village Kurdi there was no woman present at the scene of incident as by giving such an affidavit, life of applicant (rajbala) will be saved from the said murder case and saying this all the four persons left his house. It is further alleged that to get this affidavit signed, after three days, the said Sharanveer son of Harkhyal took the applicant Yogendra along with another friend of his village namely, Yogendra son of Bakhtawar to Meerut in a vehicle and there got a blank paper signed. It is further alleged that after some time, it came to light that Sharanveer and others had given a fake affidavit in their name to higher authorities, regarding which neither he had any information nor know the contents of the letter and further the same was not written by them. It is further alleged that marriage of sister of Sharanveer son of Harkhayal, resident of his village, is solemnized in Village Tikri and she used to go at the house of applicant (Rajbala). It is therefore, alleged that the police after investigation found that the said letter was forged and signed fraudulently in which the role of Sharanveer son of Harkhayal, and four other unknown persons has been found suspicious and further an attempt has been made to influence the investigation of Case Crime No. 212 of 2020, under Sections 147/148/149/34/307/302/506/120B IPC, in

which the applicant was accused, therefore the present case has been lodged under Sections 420/120B/467/468 IPC.

4. It is contended by learned counsel for the applicant that applicant has been falsely implicated in the present case due to political rivalry. It is further submitted that applicant is a senior citizen lady aged about 72 years old and is suffering from various old age diseases. In the FIR, false allegation has been levelled against the applicant. The applicant is having definite apprehension that she may be arrested by the police any time.

5. Learned counsel for the applicant further submitted that the entire allegation from the face of F.I.R., where informant is a police officer, is based upon the hearsay input, where nothing surfaced during the course of investigation to connect the applicant, prima facie, with the allegations levelled against her in the present FIR. It is also submitted that applicant though involved in various case but she has explained the criminal history according to which she is on bail and has not been convicted in any case. The applicant has been made accused merely on the basis of presumptions and assumptions. He submits that necessary ingredients to constitute the alleged offence are missing in this case. He has not committed any offence. There is no ingredient of Section 420 of IPC in the FIR. It is further submitted that to attract the offence under Sections 467, 468 of IPC, it is mandatory on the part of the prosecution to establish that the alleged affidavit was either prepared by the applicant or its preparation was in the knowledge of the applicant. The basis requirement/ingredients to bring home the accusation under the alleged offences are as under:-

Offence punishable under Section 467 IPC, the basic ingredients are:- (i) commission of forgery; (ii) that such commission of forgery must be in relation to a document purporting to be (a) a valuable property; or (b) a will; or (c) an authority to adopt a son; or (d) which purports to give authority to any person to make or transfer any valuable security; or (e) the receive the principle, interest or dividends thereon; or (f) to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or (g) an acquittance or receipt for the delivery of any movable property or valuable security.

Offence punishable under Section 468, IPC, the basic ingredients are (i) Commission of forgery, (ii) that he did so intending that the document or electronic record forged shall be used for the purpose of cheating. Offence punishable under Section 420, IPC.

Offence punishable under Section 420 IPC, the basic ingredients are:- To constitute the said offence there must be deception i.e., the accused must have deceived someone; that by such deception the accused must induce a person (i) to deliver any property; or (ii) to make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or (iii) that the accused must have done so dishonestly. The offence punishable under Section 120B, IPC, to constitute criminal conspiracy, there must be agreement between two or more persons. The agreement should be to do or cause to be done some illegal act, or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must further prove; or (iv) that some act besides the agreement was done by or more of the parties in pursuance of it.

6. In support of the above contention, learned counsel for the applicant has relied upon the recent case of **Usha Cakraborty and Another Vs State of West Bengal and another, 2023 Live Law (SC) 67**. It is further submitted that Section 438 Cr.P.C. provides that any person who has reason to believe

that he may be arrested on accusation of having committed a non bailable offence, in the event of arrest shall be released on bail, and the court may, after taking into consideration, inter alia, the following factors, namely, (i) the nature and gravity of the accusation; (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice and; (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested. It is submitted that in the present case, applicant has been criminal history of fourteen cases including the present case and she has explained the same in paragraph no. 55 of the affidavit in a tabular form, as per which she has been acquitted in two cases, enlarged on bail in eight cases, protection has been granted in two cases and one case has been dropped.

7. It is further submitted by learned counsel for the applicant that despite the alleged offence being grave and serious, and there being several criminal cases pending against the accused, these factors by themselves cannot be the basis for refusal of prayer for bail, which includes anticipatory bail also. In support of his argument, he relied upon the case of **Prabhakar Tiwari Vs State of UP, (2020) SCC Online SC 75**. It is further submitted that there is no direct or indirect evidence against the applicant to bring-out her role in participation of alleged offence.

8. It is strenuously submitted by learned counsel for the applicant that the applicant has joined the investigation as and when required by the Investigating Officer. He further submitted that there is not even an iota of admissible evidence against the applicant and she has been falsely implicated. He further submitted that now the charge sheet stands filed, so there is no requirement of any sort of custody or custodial interrogation of the applicant. In support of his argument, learned senior counsel relied upon the judgements of **Shri Gurbaksh Singh Sibbia and others Vs state of Punjab, AIR 1980 SC 1632; Sushila Aggarwal and others Vs State (NCT of Delhi) and another, (2020) 5 SCC 1**.

9. Learned counsel has also drawn attention of the Court towards a recent judgement of Hon'ble Apex Court in the case of **Md Asfak Alam Vs The State of Jharkhand and another (Criminal Appeal Nos, 2207 of 2023** arising out of Special Leave Petition (Criminal) No. 3433 of 2023 decided on 31.07.2023, wherein the Apex Court emphasizes the paramount importance of personal liberty and issued landmark guidelines regarding anticipatory bail. The Apex Court has held that arrest should not be made routinely, and the exercise of this power must be guided by the necessity of custodial investigation or preventing the accused from tampering with evidence or influencing witnesses. The Apex Court, referring to various cases, including **Arnesh Kumar v. State of Bihar and Another, (2014) 8 SCR 128**, to lay down the guidelines for granting anticipatory bail, emphasizes that such bail should be granted unless there are exceptional circumstances. It is, therefore, prayed that applicant shall abide with all the conditions imposed by this Court, if granted anticipatory bail by this Court.

10. Learned AGA has opposed the prayer for bail, but could not dispute the said facts.

11. While considering bail application of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending FIR, wherein the applicant stands arraigned as an accused. **In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included.** Perusal of the explanation of criminal history in tabular form under paragraph no. 55 shows that applicant has been acquitted in two cases and one cases has been dropped and in rest cases she is either on bail or has been granted protection. Four cases appears to have been slapped by the prosecution after the present case.

12. It is cardinal principle that Bail is a rule and Jail is an exception, which has been well recognized by Apex Court more specifically on the touchstone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs Central Bureau of Investigation and another, 2022 (10) SCC 51.**

13. Learned AGA could not show any exceptional circumstances which would warrant denial of bail to the applicant. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that her mere presence at large would intimidate the witnesses or that accused will use her liberty to subvert justice or tamper with the evidence.

14. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, she is directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of **Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.** The future contingencies regarding anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satiligappa Mhetre Vs State of Maharashtra and others, reported in (2011) 1 SCC 6941,** wherein the Apex Court has reiterated the law laid down by the Constitutional Bench in the Case of **Shri Gurubaksh Singh Sibbia and others, reported at (1980) 2 SCC 665.** Further this court has also considered that the applicant herein is a lady accused, a senior citizen of 72 years and is suffering from various old age ailments. In absence of prima facie strong evidence a person cannot be denied bail on the ground that he or she was having several cases against him/her. If the material on record is not sufficient in view of the court to establish reasonable prima facie case bail cannot be denied based upon antecedents, though in the present matter, criminal history is well explained. It would be a different matter altogether where bail is sought, but the prosecution makes out a reasonably strong prima facie case based upon material in such eventuality the antecedents of the case may be extremely relevant for consideration.

15. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant Smt Rajbala involved in the aforesaid crime be released on anticipatory bail on furnishing a personal bond of Rs. 50,000/- with two

sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(1) The applicant shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation;

(2) 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; and

(3) The applicant shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(4) The applicant shall surrender her passport, if any, to the concerned Court forthwith. Her passport will remain in custody of the concerned Court.

(5) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

(6) In case, the applicant misuses the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98.

(7) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

16. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

17. With the aforesaid observations/ directions, the application stands disposed of.

Order Date :- 23.11.2023/RavindraKSingh