

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12511 of 2023

Applicant :- Shamila Begum

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Anuj Kumar Mishra

Counsel for Opposite Party :- G.A.,Ankit Kapoor

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant **Shamila Begum** seeking anticipatory bail in Case Crime No. 109 of 2023, under Sections 419, 420, 467, 468, 471, 120-B IPC, Police Station Ramnagar, District Varanasi.
3. is alleged in the F.I.R. that the will deed regarding the property of Smt. Sallan, the late grandmother of the informant was executed in favour of her elder son, Mohammad Hanif on 25.06.1998 but subsequently, the area of the land mentioned in the aforesaid will deed was exceeded by manipulation and demotion order in respect thereof was also obtained from the tehsil. Subsequently, a will deed dated 29.09.2011 was executed by Mohammad Hanif in respect of the excess land whereas he was unaware of the fact that what was the actual area of the property which was the subject matter and the will deed executed by Smt. Late Sallan on the basis of their application, the mutation order was obtained. An F.I.R. was lodged on 28.05.2023 and investigation started, which is still going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It has been submitted that in case applicant is granted anticipatory bail, she shall not misuse the liberty of bail and would obey all conditions of bail.
5. It is further submitted that the present applicant is an illiterate

lady and she is totally unaware of the fact as to what manipulation was done in the will deed or revenue records. It is further submitted that the present applicant has committed no fraud and no wrongful gain has been made in her favour. It is also submitted that the present applicant is totally unaware about the mutation proceedings. It is further submitted that fraud, if any, has been committed by the co-accused, Murari Yadav, Advocate who also obtained will deed regarding a piece of land in his favour from the applicant and other co-accused persons. It is next submitted that the applicant has no criminal antecedents to her credit and she is entitled for anticipatory bail.

6. Learned A.G.A. as well as learned counsel for the informant have opposed the prayer for anticipatory bail and it has been vehemently argued that the present applicant in criminal conspiracy with all the other accused persons have deliberately made manipulation in the will deed executed by deceased Smt. Sallan and she is very well enjoying the benefit of the said manipulation and in that way, the fraud has been committed by her and a huge monetary gain has been made in her favour.

7. At this stage, it appears that the present applicant was very well aware of the fraud which was committed in respect of the area of the land mentioned in the will deed and she was enjoying the wrongful gain. In view of that, the active participation and involvement of the applicant in the commission of the crime alleged is found.

8. *In Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1*, the Hon'ble Apex Court has settled 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.

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, all attending facts and circumstances of the case and the fact that allegations are serious in nature, without expressing any opinion on the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant. Prayer made in the application is refused.

10. The application is **rejected**.

11. In the last, learned counsel for the applicant has urged that direction be given to the learned Court concerned to consider and decide the bail application of the applicant in terms of the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil vs. Central Bureau of Investigation and another, 2022 SCC OnLine SC 825.***

12. Hence, it is observed that the bail application of the applicant, if moved, shall be considered and decided by the Court concerned expeditiously as per law.

Order Date :- 24.11.2023

Shivangi