

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 11954 of 2023

Applicant :- Pradeep Kumar Singh

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

Counsel for Applicant :- Amarnath Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the material available on record.

2. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant -**Pradeep Kumar Singh** in Case Crime No.471 of 2022, under Sections 420, 409 I.P.C., Police Station - Cantt, District - Varanasi.

3. It has been submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. Investigation is going on in the matter. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

4. It is next submitted that co-accused, Vinay Kumar Yadav & Rajesh Kumar have already been granted interim anticipatory bail by this Court vide orders dated 07.04.2023 & 27.06.2023 in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. Nos.2209 of 2023 & 6811 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. Per contra, learned A.G.A. opposed the prayer.

6. It is alleged in the F.I.R. that the informant used to give some money to the agent of head post office Pradeep Singh to deposit it in the account of her husband Katvaru Ram Prajapati and the passbook remained in possession of the aforesaid Pradeep Singh. On so many occasions, the money was given to Pradeep Singh to deposit it in the head post office, but when the passbook was demanded by the informant, it was not handed over to her by Pradeep Singh and no money was also given to the informant after the maturity of the scheme. However, in the

F.I.R., it is alleged that the fraud has been committed by aforesaid Pradeep Singh in the criminal conspiracy with the officials of head post office. It further appears from the perusal of the record that the money which was given to the present applicant to deposit in the account of Katvaru Ram Prajapati was actually deposited in his bank account but who was the beneficiary of the aforesaid money and who actually withdrew it from the bank account of Katvaru Ram Prajapati, is a question of investigation, which is still going on.

7. One other aspect has been averred by the learned A.G.A. that on 08.08.2023, process under Section 82 Cr.P.C. has been issued against the present applicant is to meet out this argument, it has been submitted by the learned counsel for the applicant that anticipatory bail application was moved by him before the Sessions court on 31.07.2023 and during pendency of the aforesaid application, process under Section 82 Cr.P.C. was issued against him on 08.08.2023, which was totally against law. The anticipatory bail application of the applicant was rejected by the Sessions court on 06.09.2023.

8. I found force in the submissions made by the learned counsel for the applicant and if during pendency of the application for grant of anticipatory bail before the Sessions court process under Section 82 Cr.P.C. was issued by the Magistrate's court, it was not a proper procedure of law. In these circumstances, the anticipatory bail application of the present applicant is maintainable and he has made out as exceptional case in respect of the maintainability of such application in the light of the law laid down by Hon'ble the Supreme Court promulgated in the case of ***Haryana vs. Dharamraj, 2023 SCC Online SC 1085***, decided on 29.8.2023 wherein the legal position regarding maintainability of an application for grant of anticipatory bail to a proclaimed offender has been elucidated, which reads as under (relevant portion of paragraph 17 of the said judgment):

"17. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438, CrPC should not have been entertained, as he was a proclaimed offender....."

9. 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.

10. 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.

11. 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 filing of police report under Section 173(2) Cr.P.C. in the matter.

12. The application is **allowed**.

13. In the event of arrest of the applicant, 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 Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself 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 he has passport, the same shall be deposited by him before the S.S.P./S.P. Concerned.

14. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of interim protection granted to the applicant.

Order Date :- 23.11.2023/Shivangi