

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12076 of 2023

Applicant :- Naveen Chandra Dubey

Opposite Party :- State of U.P.

Counsel for Applicant :- Barmeshwar Nath Tiwari, Parijat Kumar Tiwari, Venu Gopal

Counsel for Opposite Party :- G.A.

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 - **Naveen Chandra Dubey** seeking anticipatory bail in Case Crime No. 389 of 2020, under Sections 420, 467, 468, 471, 474, 504, 506 IPC, Police Station- Qilla, District- Bareilly.
3. The prosecution story as unfolded in the FIR is that the informant company had purchased a property in 2007 by way of a registered sale deed but subsequently the main accused Mohd. Tahir in association with his associates including the present applicant procured some forged mutation order in his favour from the Consolidation Court and on the basis of the forged and fabricated documents made an attempt to grab the property of the informant and the present applicant was an active member of the gang. FIR was lodged on the basis of an application under Section 156(3) Cr.P.C. and investigation started, which is going on.
4. 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 against the present applicant in the matter. It is further submitted that no mutation order has been obtained by the applicant in his favour and his role assigned in the entire FIR is only to assist the main accused Mohd. Tahir. It is further submitted that the criminal history of two cases against the applicant has been explained in the affidavit. He is cooperative with the investigation of the case and he has absolutely no concern with the matter and the cheating, if any, has been made by the

main accused Mohd. Tahir. The present applicant is not the beneficiary at all in the benefits allegedly obtained by procuring forged mutation orders. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail. It is further submitted that co-accused Dharmendra Yadav has already been granted anticipatory bail by this Court in Cr. Misc. Anticipatory Bail Application U/S 438 CR.P.C. No. - 10732 of 2023 by order dated 25.9.2023. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. opposed the prayer for anticipatory bail. It is vehemently submitted that the entire fraud committed by the accused persons is very serious and grievous in nature. He is the active member of the gang, who obtained unlawful benefits and he is very well indulged in making attempt to grab the valuable property of the informant company.

6. In the present matter investigation is going on, at this stage it is found that there is no written mutation order in favour of the present accused applicant. He is said to be cooperative with the investigation of the case.

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 filing of police report under Section 173(2) Cr.P.C. before the competent Court.

10. The application is **allowed** accordingly.

11. 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.

12. 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 :- 2.11.2023

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