

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 12022 of 2023

Applicant :- Ram Chandra Singh And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Saral Singh, Satyendra Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. This application has been moved on behalf of the applicants - **Ram Chandra Singh** and **Sarvesh Kumar** seeking anticipatory bail in Criminal Case No.172 of 2002 arising out of Case Crime No.101 of 1999, under Sections 420, 467, 468, 471 IPC, Police Station Kotwali, District Etawah.
4. As per prosecution story, it is alleged that the accused persons including the present applicants prepared forged documents of the land of informant and on the basis of the same, they executed a sale deed in their favour. F.I.R. was lodged on 26.2.1999 and investigation commenced. After investigation, the I.O. of the case submitted final report against which a protest petition was filed which was treated as a complaint case and after recording the statements under sections 200 & 202 Cr.P.C. the accused persons including the applicants have been summoned under Sections 420, 467, 468, 471 IPC.
5. Learned counsel for the applicants submits that that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. They have been falsely implicated in this matter. Allegations levelled against the applicants are false. It is further submitted that applicant no.1, who is an old aged ailing person, is a marginal witness in the alleged sale deed and applicant no.2 is friend of applicant no.1. They are not the beneficiary in any way. Although process under Section 82 Cr.P.C. has been issued by the Court against the applicants, but from a perusal of the record, it appears that no proper procedure was followed by the Investigating Officer, hence to proceed under Section 82 Cr.P.C. was not justified in the eyes of law. It is also submitted that on 2.11.2023, this Court was pleased to pass the order directing the applicants to apprise the Court as to whether the order passed by the court concerned

declaring the applicants as proclaimed offenders has been assailed or not in view of the recent pronouncement of the Hon'ble Apex Court in *State of Haryana vs. Dharamraj*, 2023 SCC Online SC 1085. It is also submitted that earlier an Application u/s 482 Cr.P.C. No. 15316 of 2006 was preferred by the applicants wherein stay order was granted to them vide order dated 5.12.2006. The stay order was continued, but the learned trial court in compliance of the order of the Hon'ble Apex Court passed in *Asian Resurfacing of Road Agency Pvt. Ltd and another Vs. Central Bureau of Investigation*, (2018) 16 SCC 299, proceeded with the trial of the case and summons and warrants were issued against the applicants.

6. Learned A.G.A. opposed the prayer for anticipatory bail and it has been submitted that order under Section 82/83 Cr.P.C. has already been issued against the accused applicant. It is further submitted that from order-sheet of the trial court, it reflects that the accused applicant remained absconding since long and when despite all the efforts by issuing non-bailable warrants and letter to S.S.P., he could not be traced, process under Section 82/83 Cr.P.C. was issued on 21.9.2023 under the instructions of the court. It is further submitted that even before filing of the anticipatory bail application before the Sessions Court, Etawah, process under Section 82 Cr.P.C. has already been issued against the accused applicants. It is also submitted that the accused applicants, against whom non-bailable warrants had been issued, are absconding and concealing themselves in order to avoid execution of warrants and declared as offenders in terms of Section 82/83 Cr.P.C., they are not entitled for anticipatory bail.

7. From the perusal of the entire order-sheet annexed with the supplementary affidavit, it appears that non-bailable warrants and process under Section 82/83 Cr.P.C. have been issued against the present applicants, which means that they have been declared as proclaimed absconders by the Court.

8. The conduct of the applicants falls within the ambit of the law promulgated by Hon'ble Apex Court in *Prem Shankar Prasad Versus State of Bihar and Another*, 2021 SCC OnLine Supreme Court 955. In the facts of the case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it reveals that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order passed by the Magistrate. Only thereafter the accused moved an application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this.

"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the

aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

20. In the case of State of Madhya Pradesh v. Pradeep Sharma (Supra), it is observed and held by this court that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr. P.C., he is not entitled to relief of anticipatory bail."

9. The present applicants, against whom non-bailable warrants and process under Section 82/83 Cr.P.C. have been issued and who have been proclaimed as absconders, are not entitled for the benefit of the anticipatory bail in the light of the law laid down in Prem Shankar Prasad case (supra).

10. Moreover, the present anticipatory bail application is not maintainable in the light of the law laid down by the Hon'ble Apex Court in **State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085, decided on 29.8.2023.**

11. In view of the law laid down by the Hon'ble Apex Court, I deem it not a fit case to grant anticipatory bail to the present applicants. Such persons, who do not cooperate with the investigation / trial at all, is not entitled for any relief from this Court by way of granting anticipatory bail.

12. The anticipatory bail application is, accordingly, **rejected.**

Order Date :- 1.12.2023

ss