

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12017 of 2023

Applicant :- Mahesh

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Vijay Shantam

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant - **Mahesh** seeking anticipatory bail in Criminal Case No. 2476 of 2013, arising out of Case Crime No. 185 of 2007, under Sections 420, 406, 506 IPC, Police Station Ramghat, District Bulandshahr.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. It is 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. It is further submitted that in the case diary there is no detail regarding the date and place as to when Rs. 1,50,000/- were given by the informant to the present applicant. It is also submitted that the summoning order dated 12.1.2010 was challenged before this Court by way of Application U/S 482 No. 8781 of 2010 and this Court vide order dated 25.3.2010 stayed the further proceedings of the said case but however on 24.9.2020 the said application U/S 482 CrPC was dismissed. Against the said order, S.L.P. (Cri.) No. 6769 of 2020 was preferred before the Hon'ble Apex Court but the same was also dismissed vide order dated 22.1.2021 without granting any relief to the applicant. It is further submitted that the Investigating Officer of the case found absolutely no offence against the applicant during the entire investigation and that is why a final report was submitted in the matter. The applicant is a retired Police Officer having no criminal history to his credit. During investigation the applicant has been cooperative. No process under Sections 82 and 83 CrPC has been issued against the applicant and the applicant has not been declared absconder. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

4. Learned A.G.A. opposed the prayer for anticipatory bail.
5. I have considered the rival submissions made by the learned counsel for the parties.
6. From the perusal of the record it reveals that on false pretext of providing some employment in police department, the present applicant alongwith his brother took Rs. 1,50,000/- from the informant but no employment was provided and the money was also not repaid. F.I.R. was lodged and after investigation final report was submitted but however considering the entire case diary and upon hearing on the protest petition filed by the informant the Court concerned straightway summoned the present applicant to face trial for the offence under Sections 420, 406 and 506 IPC vide order dated 12.1.2010. It also reveals from the perusal of the record that the alleged offences are punishable with the imprisonment for a maximum period of seven years. Applicant has been cooperative during investigation and earlier a final report was submitted in his favour. Now no custodial interrogation is required.
7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the law on the subject finally by holding that the anticipatory bail need not be of limited duration invariably. In appropriate case, it can continue upto conclusion of trial.

It has been further held therein that anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial.

It has been further held by the Hon'ble Apex Court 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. Considering the settled principles of law regarding anticipatory bail, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on the merits of the case, in my view, it is a fit case for anticipatory

bail to the applicant **till the end of trial.**

9. The application is **allowed** accordingly.

10. 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 the Court concerned with the following conditions:-

(i) The applicant shall make himself available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(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.

11. In case of default of any of the conditions, the same may be a ground for cancellation of protection granted to the applicant.

Order Date :- 9.11.2023

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