

Court No. - 73

**Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12014 of 2023**

Applicant :- Hemtala

Opposite Party :- State of U.P.

Counsel for Applicant :- Raghbir Singh

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant - **Hemtala** seeking anticipatory bail in Case Crime No. 1054 of 2018, under Sections 420, 467, 468, 471, 506 IPC, Police Station Etmadaulla, District Agra.
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 she has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against her. Allegations levelled against the applicant are false. It is further submitted that the present applicant had absolutely no knowledge about the alleged sale deed executed by her father-in-law Rajaram in favour of some Society and since the name of the present applicant was recorded in the revenue record, she was under genuine impression that she was the owner of the property in question and under that impression a registered sale deed was executed by her in favour of the informant. It is also submitted that as a matter of fact the cheques given by the informant as consideration amount were also dishonoured by the Bank and proceedings under Section 138 Negotiable Instruments Act were initiated by the applicant against the informant. It is not plausible to say that even after lodging of the case for dishonour of the cheques against the informant, he went on the spot in the year 2018 to take possession. It is also submitted that during investigation the applicant had approached this Court vide Criminal Misc. Anticipatory Bail Application No. 7221 of 2022 wherein vide order dated 15.9.2022 protection was granted to her till submission of police report under Section 173(2) CrPC and the said liberty has not been misused by her. After completion of investigation, charge sheet has been submitted in the matter and

she has been cooperative during investigation. Applicant has no criminal history to her credit. 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, she 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 Rajaram, the previous owner of the property in question, executed a sale deed in favour of some Society in the year 1990 but however the name of the Society was not mutated in the revenue record and subsequently the names of Rajaram, Lakhan Singh Gola, the husband of the present applicant, the applicant alongwith her children was mutated against the property in question and the said property was sold by the present applicant in favour of the informant. It is also alleged that when the informant went on the spot in the year 2018 to take possession of the property in question, he came to know that the said property has already been sold in the year 1990 in favour of some Society. F.I.R. was lodged and investigation started, which culminated into charge sheet. It also reveals from the perusal of the record that the protection granted to the applicant during course of investigation has not been misused by her. After submission of charge sheet no custodial interrogation is required.

7. Though charge sheet has been filed in the matter yet 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, she shall be released on anticipatory bail on her 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 herself 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 she has passport, the same shall be deposited by her 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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