

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12095 of 2023

Applicant :- Avinash Jha

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

Counsel for Applicant :- Sharad Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicants and learned Additional Government Advocate for the State.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No. 445 of 2019, under sections 420, 406, 467, 468, 120-B IPC, P.S. Nawabad, District Jhansi during the pendency of this application.

3. As per contents of the FIR lodged through application under Section 156(3) Cr.P.C, it is stated that the informant is working as Chief Medical Superintendent in Community Health Center, Madavara. It is alleged that on 29.07.2011, the informant decided to take one Flat/Unit Number A-033, in Ansal Housing and Construction Limited having area 2093 sq. ft, at the total sale consideration of Rs. 37,45,022.22. It is also alleged that after deducting the cash down discount of Rs 37,4502.22, the net value of flat agreed at Rs 33,70,520/-. The informant took loan of Rs. 26,96,000/- from HDFC Bank and made the remaining down payment and thereafter on 30.07.2011, an agreement was signed between the applicant, namely, Avinash Chandra Jhan, on behalf of Ansal Housing and Construction Limited and the informant and thereafter the agreement was handed over to the informant. All the installments related to the said flat are said to have been paid by the informant and an excess of Rs 2235 was withdrawn by the bank, which was returned to the informant by the bank vide cheque number 045170 dated 15.05.2018. Thus, it is alleged that the entire cost of the said flat has been paid by the informant but neither the possession was given to the informant by Ansals Housing and Construction Limited Delhi nor registered sale deed was

executed by the company in the name of the informant. Several talks were held with the informant and company but no satisfactory reply was given by them, then the informant sent a notice to the alleged company on 01.09.2018, to which the company replied on 15.10.2018 stating that the allotment of informant's flat has been cancelled and the flat has been allotted to some other person. Thus, the company in conspiracy with the applicant have cheated the informant without any information and misappropriated the amount paid by the informant.

4. Record discloses that the applicant has approached this Court challenging the registration of the FIR by filing Criminal Misc Writ Petition No. 4091 of 2020 wherein this court had granted protection of arrest till submission of charge sheet vide order dated 5.3.2020. Thereafter charge sheet in the matter has been filed on 8.9.2020 upon which cognizance has been taken on 9.11.2020 and again applicant approached this Court by filing Application u/s 482 Cr.P.C. No.25532 of 2023, which has been disposed of by this court vide order dated 18.7.2023 directing the applicant to appear before the Court below within three weeks and seek bail, which shall be considered in view of law laid down by Hon'ble Apex Court in the Case of **Satendra Kumar Antil Vs Central Bureau of Investigation and another reported in (2022) 10 SCC 51.**

5. It is submitted by learned counsel for the applicant that the applicant is only an employee of the company and he has not received any benefit in the entire matter, rather he has done all the work as per the legal procedure and as per the responsibilities of his post. The arrest of the applicant/accused by the police in the above registered case will cause irreparable damage and his social image will be harmed by being humiliated in the society and therefore, has prayed for anticipatory bail.

6. It is further contended by learned counsel for the applicant that the allotment of the apartment was under a tripartite agreement between the allottee (informant), builders and the HDFC Bank (the creditor). As per the terms and conditions of the tripartite agreement, in the event of default in repayment of the credit facility provided to the allottee, the builder, on intimation by HDFC Bank, was required to cancel the allotment of the apartment made in favour of the allottee and refund all money to HDFC Bank directly under intimation

to the borrower. It is further submitted that vide notice dated 21st August, 2015, the HDFC Bank had intimated the builders that financial discipline was not maintained by the allottee (informant) and that the total outstanding against the account is Rs. 26,15,226/-. The HDFC Bank thereby requested that the allotment be cancelled and the entire amount be returned. It is further submitted that pursuant to the above notice, the allotment was cancelled and money was returned to HDFC Bank as per the terms and conditions of the tripartite agreement.

7. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case. In the FIR, false allegation has been levelled against the applicant. He further submits that allegations made against the aforesaid applicant are not true as alleged against the applicant. The applicant is having definite apprehension that he may be arrested by the police any time.

8. Learned AGA has opposed the prayer for bail and submitted that in the present case, FIR has been lodged on the application submitted by the informant under Section 156(3) Cr.P.C. after the order of the court below dated 5.2.2019 and after investigation, based on the evidence collected by the Investigating Officer, charge sheet in the matter has been filed and, prima facie a cognizable offence is made out. It is further submitted that the applicant instead of appearing and obtain bail as directed by this Court is misusing his position and therefore, he is not entitled to the benefit of provision of Section 438 CrPC.

9. In the light of above, looking to the facts and circumstances of this case, submissions of learned counsel for the parties as mentioned above, taking into consideration the role assigned to the applicant as per prosecution case, gravity and nature of accusation, this Court is of the view that no case for exercising its discretionary power under Section 438 Cr.P.C. is made out in favour of applicant.

10. Accordingly, this application under Section 438 Cr.P.C. is **rejected**.

11. After arguing for some time, applicant's counsel submits that a direction may be issued to the court below to decide the bail application of the applicant in view of the judgement in the case of **Satender Kumar Antil vs. Central Bureau of**

Investigation and another, reported in 2021 SCC Online SC 922.

12. Applicant is directed to move regular bail application before the appropriate forum and if such application is given, the court below shall consider and disposed of the bail application expeditiously in accordance with law.

Order Date :- 23.11.2023/RavindraKSingh