

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 12108 of 2023

Applicant :- Awadhesh Singh And 2 Others

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

Counsel for Applicant :- Prashant Pratap Rao,Rajiv Chowdhury

Counsel for Opposite Party :- G.A.,Ramesh Chandra Tiwari

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affidavit filed on behalf of the applicant and counter affidavit filed on behalf of opposite party no.2 are taken on record.
2. Heard learned counsel for the applicants, learned A.G.A. for the State as well as learned counsel for the opposite party no.2 and perused the material available on record.
3. This application for anticipatory bail has been filed by applicants - **Awadhesh Singh, Pramod Singh** and **Santosh Singh** in connection with Case Crime No.136 of 2023, under Sections 420, 467, 468, 471, 457, 380, 506 IPC, Police Station Cholapur, District Varanasi.
4. The prosecution story, as disclosed in the F.I.R., is that the named accused persons procured a succession order in their favour after the death of father of the informant, who had already executed a will deed in favour of his daughter, the informant, and on the basis of the forged succession order, the named accused persons also committed a theft by house breaking in the house of the informant. F.I.R. was lodged on 8.4.2023 and now charge-sheet has been submitted.
5. It is submitted by the learned counsel for the applicants that the applicants are innocent and they have apprehension of their arrest in the above-mentioned case, whereas there is no credible evidence against them. They have been falsely implicated into this matter. Allegations levelled against the applicant are false. The investigation of the case has been completed and charge-sheet has been filed and cognizance has been taken into the matter. It is further submitted that the will deed allegedly executed by the deceased in favour of the informant is a forged and fabricated document. It is also submitted that the alleged will deed has been challenged in O.S. No.2265 of 2022 filed by the applicants before the competent Civil Court at Varanasi, which is still pending. It is also submitted that on the basis of succession, a mutation order has also been passed in favour of the applicants. It is further submitted that there is no independent witness of the alleged theft committed in the house of the informant. It is further submitted that the applicants

have been cooperative during the course of investigation and now after submission of charge-sheet, no custodial interrogation is required in the matter. It is further submitted that a Crl. Misc. Writ Petition No.10022 of 2023 was preferred by the applicants wherein interim protection was granted to them vide order dated 28.6.2023, but the same became infructuous after submission of the charge-sheet in this matter. It is further submitted that the applicants have no criminal history to their credit. In case the applicants are granted anticipatory bail, they shall not misuse the liberty of bail and would obey all conditions of bail.

6. Per contra, learned A.G.A. as well as learned counsel for the opposite party no.2 opposed the prayer for anticipatory bail and it has been submitted that the forged mutation order procured in their favour by the applicants have already been quashed by the order dated 14.7.2022 passed by the S.D.M. concerned. It is further submitted that the Lekphal had also made statement in favour of the informant during investigation of this case. It is further submitted that the witnesses of the will deed have also corroborated the genuineness of the will deed before the I.O. in their statements given u/s 161 Cr.P.C. It is also submitted that since the informant was the only daughter of her father, there was no justification for the applicants to get a mutation order in their favour after the death of the father of the informant. The applicants have cheated the informant and they have also committed theft in her house and as such they are not entitled for anticipatory bail.

7. In the present matter, the investigation has culminated into the charge-sheet. The applicants have been cooperative during investigation. Prima facie, matter relates to civil nature and admittedly a civil suit is pending between the parties regarding the genuineness and legality of the will allegedly executed in favour of the informant. After submission of charge-sheet now no custodial interrogation is required in the matter.

8. 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.

9. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicants 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 applicants till end of the trial in the matter.

10. The anticipatory bail application is **allowed**.

11. In the event of arrest of the applicants in the aforesaid case crime, they shall be released on anticipatory bail till end of the trial on their 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 applicants shall make themselves available before the court concerned on the date fixed in the matter;

(ii) The applicants 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 officer;

(iii) The applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them before the S.S.P./S.P. Concerned.

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

Order Date :- 16.11.2023

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