

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12583 of 2022

Applicant :- Naaz Aysha

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

Counsel for Applicant :- Manish Tandon, Satya Dheer Singh
Jadaun

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant- **Naaz Aysha** seeking anticipatory bail in Case Crime No.57 of 2022, under Sections- 420, 467, 468, 471, 120B I.P.C., Police Station- Chamanganj, District- Kanpur Nagar.
3. As per allegations in the F.I.R., a plot having a Shiv Ji temple and a well in the premises was entered in the record of Kanpur Municipal Corporation as such from the year 1932; thereafter it was converted into a trust; the present applicant- Naaz Aysha hatched a conspiracy with two other co-accused Baba Mukhtar and Mehmood Umar and in connivance of the officers and falsely showing herself to be resident of Bekanganj Nagar Nigam, Kanpur Nagar got prepared a false document showing the applicant's ownership and the factum of existing Mandir over the said property was concealed.
4. It is submitted on behalf of the applicant that the said property belonged to Kanpur Improvement Trust and sold by trust to one Mahipal in the year 1927; thereafter property was numbered as 88/49 in the municipal record and the same was inherited by his son Manni Lal; thereafter through applicant's predecessor-in-interest, ultimately came in the hands of present applicant by registered sale deed of 2003. It is further submitted that the dispute is essentially of civil nature which has been attempted to be converted into a criminal one for ulterior motive. It is also 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. After completion of investigation, charge sheet has been submitted in the matter. The applicant had been cooperative in the investigation. 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.

5. It is further submitted that specific queries, three in number, were made by the Court vide order 6.9.2023 and to satisfy the same, supplementary affidavit has been filed and it has been specifically deposed that the name of Mahipal, in whose favour Kanpur Improvement Trust Kanpur had executed a sale-deed, was any how mistyped and wrongly written in the subsequent records as Mahai and then Mahavir Prasad and the said Mahipal was also known as Munni Lal. It is further submitted that the copy of the sale deed executed by Smt. Shivraja Kunwar and her two sons Hari Lal and Ram Pal in favour of Shamim Iqbal on 5.3.1987 and copy of the subsequent sale deed which was executed by Shamim Iqbal in favour of Maqbool Ahmad Ansari on 8.9.1987 have also been filed alongwith the supplementary affidavit. It is also submitted that since the entire property was a private property and the Mandir, if any, made over the property was also a private property and had never been a public religious place, the subsequent purchasers were at liberty to use it in accordance with their requirement and wishes.

6. Per-contra, learned A.G.A. opposed the prayer for anticipatory bail and submitted that one of co-owners of the property in question has specifically stated before the I.O. during investigation that the owners of the property never intended to sell the Mandir established over there but however, he could not explain as to why this fact could not specifically be mentioned in the relevant sale deeds. It is also submitted that in paragraphs 12, 19, 27 and 29 of the counter affidavit some wrong facts have been mentioned due to typographical error with regard to which the I.O. of the matter has given his personal affidavit before the Court and has tendered unconditional apology for the said inadvertent mistake. It is further submitted that the deponent of the counter affidavit S.I. Ram Kumar Shukla has retired from service on 31.3.2023 and he is also present in person before the Court and tenders his unconditional apology.

7. I have considered the rival submissions made by the learned counsel for the parties.

8. The explanation given by the learned State Counsel on behalf of the present I.O. S.I. Tejveer Singh and the deponent retired S.I. Ram Kumar Shukla seems to be satisfactory. The I.O. of the case as well as the retired S.I. Ram Kumar Shukla are exempted from their personal appearance before the Court until further orders.

9. So far as the anticipatory bail is concerned, the matter prima facie appears to be of civil nature. The interim protection granted to the lady applicant by this Court vide order dated 9.2.2023 has not been misused by the applicant and she is said to be cooperative during investigation and now after submission of charge sheet no custodial interrogation is required.

10. 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.

11. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest.

In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87CrPC that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

12. Insofar as the present case is concerned and the general principles under Section 170CrPC, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

12. 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.

13. The application is **allowed** accordingly.

14. 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.

15. 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 :- 29.11.2023

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