

**Court No. - 73**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438  
CR.P.C. No. - 12262 of 2023

**Applicant :-** Amit Sharma

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

**Counsel for Applicant :-** Mrityunjay Dwivedi,Pankaj Sharma

**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 perused the record.

2. Apprehending his arrest in Case Crime No.416 of 2023, under Sections 420, 406, 467, 468, 471, 504, 506 IPC, Police Station Noida, Sector 24, District Gautam Budh Nagar, the applicant - **Amit Sharma** has filed this anticipatory bail application seeking anticipatory bail in the aforesaid crime number.

3. On persuasion of present applicant and other co-accused Nitin @ Babloo, the informant proceeded for execution of an agreement to sale executed by a farmer Jagmal, who was presented as an owner of the landed property by the present applicant and a huge amount of Rs.32 lacs was deposited in some installments in the bank account of aforesaid Jagmal by the informant and an agreement to sale was also executed. Subsequently it was brought to the knowledge of the informant that by way of impersonation, some imposter named Vijendra had executed the agreement to sale in place of real owner Jagmal and the entire money was grabbed and misappropriated by all the named accused persons including the present applicant. It is also alleged in the F.I.R. that on demand of money, present applicant transferred Rs.2 lakh in the bank account of witness Manish Kumar and the said Jagmal (Vijendra) also issued a cheque valuing Rs.13 lakh, which was dishonoured. F.I.R. was lodged on 16.9.2023 and investigation started, which is going on.

4. Learned counsel for the applicant submits that that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. He has been falsely implicated in this matter. Allegations levelled against the applicant are false. Investigation is going on into the matter. It is further submitted that the present applicant has absolutely no concern with the alleged incident. It is also submitted that he is not a witness to the alleged agreement to sale, as alleged by the prosecution, rather Manish Kumar and Suraj Giri are the two witnesses of the aforesaid agreement to sale. It is also submitted that it is an admitted fact that the applicant has transferred Rs. 2 lakh in

favour of Manish Kumar, who happens to be his friend, but the said transaction has no concern with the alleged offence. It is also submitted that the present applicant has played no role in the execution of agreement to sale by which fraud was committed to the informant of the case. It is further submitted that the power of attorney was executed by the said Jagmal in favour of Jonny Singhal, the son of the informant on the same day when agreement to sale was executed and no objection was raised at that time by the informant regarding the real identity of Jagmal, which shows that the present applicant was not the person, who for the first time introduced the informant with Jagmal. It is also submitted that the criminal history of the applicant has been explained. He is cooperating with the investigation of the case. Wrongful gain, if any, has been enjoyed by co-accused Jagmal (Vijendra) and as such applicant is entitled for anticipatory bail.

5. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been submitted that as a matter of fact, the real Jagmal has already expired in 2015 and it was the present applicant who introduced an imposter namely Vijendra as Jagmal to the informant.

6. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held 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.

7. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

8. Considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant 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

applicant till the filing of police report under section 173 (2) Cr.P.C. before the competent Court.

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

10. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till the filing of police report under section 173 (2) Cr.P.C. before the competent Court on his furnishing a personal bond of Rs.50,000/- with two sureties each in the like amount to the satisfaction of Station House Officer of the police station concerned with the following conditions:-

(i) The applicant shall make himself available for interrogation by a police officer as and when required.

(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 Investigating Officer shall be at liberty to file appropriate application for cancellation of protection granted to the applicant.

**Order Date :- 1.12.2023**

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