

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12326 of 2023

Applicant :- Tushar Jain

Opposite Party :- State of U.P.

Counsel for Applicant :- Kapil Tyagi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard Sri Kapil Tyagi, learned counsel for the applicant and Sri Deepak Kumar Singh, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.898 of 2023, registered under Sections 420, 406 and 409 IPC at Police Station- Indrapuram, District Ghaziabad with a prayer to enlarge him on anticipatory bail.
4. As per prosecution story, the applicant, who happen to be the Manager of Resident Welfare Association, Apex Green Valley, Sector- 9 Vaishali, Ghaziabad, is stated to have embezzled an amount of Rs.35-36 lakhs of the members of the society on the pretext of depositing the electricity bills. There are allegations of illegally siphoning of Rs.25,000/- to his account as the cheque is stated to have bounced regarding his salary.
5. Learned counsel for the applicant has stated that the applicant had resigned from the society on 23.03.2022 itself and the FIR has been instituted after a delay of about one year. The application moved by certain members was given to the SHO, Indrapuram Ghaziabad on 09.05.2022 and the first endorsement has been made on 13.02.2022 i.e. also delayed. No electricity connection of any of the members of the society has been disconnected, as such the allegations are vague and false. Learned counsel has further stated that the applicant has been made a scapegoat out of the political rivalry of the members of the society.
6. Learned counsel for the applicant has further stated that the case of civil in nature has been converted into criminal one. The applicant is not a public servant, as such Section 409 I.P.C. is

not attracted. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. There are no criminal antecedents of the applicant. The applicant has apprehension of his arrest. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

7. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application but unable to dispute the submissions raised by the learned counsel for the applicant.

8. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of "***Sushila Aggarwal Vs. State (NCT of Delhi)***, (2020) 5 SCC 1". The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

9. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Tushar Jain** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii). that 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 from disclosing such facts to the court or to any police officer or tamper with the evidence;
- (iii). that the applicant shall not leave India without the previous permission of the court;
- (iv). that in case charge-sheet is submitted the applicant shall not tamper with the evidence during the trial;
- (v). that the applicant shall not pressurize/ intimidate the prosecution witness;
- (vi). that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
- (vii). that in case of breach of any of the above conditions the court concerned shall have the liberty to cancel the bail.

10. It is made clear that observations made hereinabove are

exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 23.11.2023
Ravi Kant

(Krishan Pahal, J.)