

**Court No. - 73**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 12243 of 2023

**Applicant :-** Naseem Urf Nadeem

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

**Counsel for Applicant :-** Irshad Ahmad

**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 material available on record.
2. This application for anticipatory bail has been filed by applicant - **Naseem Urf Nadeem** in connection with Case Crime No.1345 of 2020, under Sections 394, 120-B, 109, 411 IPC, Police Station Majhola, District Moradabad.
3. As per F.I.R. version, the present applicant, who happens to be the brother-in-law (nandoi) of the lady informant, entered into her house along with her husband and two other unknown persons and an extortion was made and the accused persons took Rs.1 lakh cash, jewelries, etc. and also made an assault upon the head of the informant. F.I.R. was lodged on 19.11.2020 and investigation started. In the first charge-sheet submitted in the matter, the applicant was not named, but in the supplementary charge-sheet, he was made an accused in this case.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and he has apprehension of his arrest in the above-mentioned case, whereas there is no credible evidence against him. He has 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 in the matter. It is further submitted that co-accused Fida Hussain and the informant had some matrimonial dispute, as they are husband and wife and the present applicant, being the brother-in-law (nandoi) of the informant, has been falsely roped in this case. It is further submitted that there is no medical report on record. Applicant was not named in the first charge-sheet. It is also submitted that earlier in CrI. Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No.-2468 of 2021, the applicant was granted

protection by way of anticipatory bail till the submission of police report u/s 173 (2) Cr.P.C. and the said liberty was not misused by the applicant. It is also submitted that the applicant has been cooperative during investigation. It is further submitted that the applicant is having no criminal antecedents to his credit and as such he is entitled for anticipatory bail.

5. Learned A.G.A., on the other hand, opposed the prayer for anticipatory bail, but however he could not dispute this factual aspect that the injured of this case was not medically examined and there is no injury report on record.

6. In the present matter, applicant was granted anticipatory bail during investigation and he did not misuse the said liberty. During the course of investigation, the applicant has been cooperative. After submission of charge-sheet, no custodial interrogation is required in this matter.

7. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has settled the controversy finally by holding 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.

8. In **Aman Preet Singh vs. C.B.I. through Director, AIR 2021 Supreme Court 4154**, the Hon'ble Apex Court has clearly held that if a person, who is an accused in a non-bailable/cognizable offence, was not taken into custody during the period of investigation, in such a case, it is appropriate that he may be released on bail as the circumstances of his having not been

arrested during investigation or not being produced in custody is itself sufficient to entitle him/her to be released on bail.

9. Hence, 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 end of the trial in the matter.

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

11. In the event of arrest of the applicant in the aforesaid case crime, he shall be released on anticipatory bail till end of the trial on his 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 himself available before the court concerned on the date fixed in the matter;

(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 officer;

(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.

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

**Order Date :- 20.11.2023**

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