

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 12880 of 2023

Applicant :- Monu

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Amit Rai

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicant - **Monu** seeking anticipatory bail in Case Crime No. 747 of 2022, under Sections 406, 420, 506 IPC, Police Station Kotwali Nagar, District Muzaffarnagar.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. It is submitted by the learned counsel for the applicant that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. Allegations levelled against the applicant are false. It is further submitted that no offence has been committed by the present applicant. Dispute is purely of civil nature. It is further submitted that a case under Section 138 Negotiable Instruments Act has already been filed by the informant. It is further submitted that the applicant was given a notice under Section 41-A CrPC during investigation and he did not misuse the said liberty. It is also submitted that the criminal history of the applicant has been explained sufficiently. After completion of investigation, charge sheet has been submitted in the matter. 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, he will not misuse the liberty of bail and would obey all conditions of bail.
4. Learned A.G.A. opposed the prayer for anticipatory bail and submitted that a cheque, which was given by the applicant, was dishonoured when presented in the Bank. It is also submitted that the offence of same nature has been committed twice by the present applicant and cases in respect thereof are pending but however, he could not dispute this factual aspect of the matter that

the I.O. of the case did not require arrest of the present applicant during investigation.

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

6. From the perusal of the record it reveals that on the false pretext of providing iron rod (Sariya) on cheap rate, the present applicant alongwith co-accused Sonu grabbed Rupees Thirty Lakhs from the informant but the sariya was not made available to the informant and the money was also not re-paid. A cheque valuing Rupees Thirty Lakhs was issued by the applicant in favour of the applicant but the same was dishonoured. F.I.R. was lodged on 7.12.2022 and investigation started, which culminated into charge sheet. It also reveals that the I.O. of the case did not require arrest of the present applicant during investigation and now after submission of charge sheet no custodial interrogation is required. Case under Section 138 Negotiable Instruments Act is already pending before the Court concerned.

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 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.

8. 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.

9. The application is **allowed** accordingly.

10. In the event of arrest of the applicant, he shall be released on anticipatory bail 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 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 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 same may be a ground for cancellation of protection granted to the applicant.

Order Date :- 23.11.2023

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