

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12397 of 2023

Applicant :- Mukesh Kumar Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Raghuvansh Misra, Yagyadhar Tripathi

Counsel for Opposite Party :- G.A., Akash Tomar

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the material available on record.
2. Present Anticipatory Bail Application has been filed with the prayer to grant anticipatory bail to the applicant -**Mukesh Kumar Gupta** in Case Crime No.308 of 2020, under Sections 406, 323, 504 I.P.C., Police Station - Sadar Bazar, District - Meerut.
3. It is alleged in the F.I.R. that after winning the trust of the informant, the named accused persons including the present applicant grabbed a huge amount of money to a tune of Rs.1.75 crores from the kitty group and also borrowed Rs.75 lakhs from the informant and her group members, subsequently, the entire money was grabbed by the accused persons and they denied to repay the same. F.I.R. was lodged on 15.09.2020 and investigation started, which is still going on.
4. It has been 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. Investigation is going on in the matter. In case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.
5. It is further submitted that the applicant has nothing to do with the alleged kitty group of the informant and no amount of money was ever given to the present applicant by the informant or any member of her kitty group. It is next submitted that there is no document in respect of borrowing of Rs.75 lakhs by the present applicant and in the same manner, there is no documentary evidence in respect of taking Rs.1.75 crores by the present

applicant from the informant and her kitty groups. It is also submitted that hand written summary of account, which was delivered to the I.O. during investigation, is a concocted piece of evidence. It is further submitted that no independent witness has supported the prosecution version in his statement under Section 161 Cr.P.C. It is further submitted that only on the basis of one D.V.D., which contains a description of conversation in between present applicant, co-accused, Arti Agarwal and her husband and the present applicant has been dragged in this case whereas the said conversation contains nothing against the present applicant in respect of the present alleged offence. It is further submitted that the applicant is a respectable social person and he is cooperating with the investigation of the case. It is next submitted that accused applicant is a senior citizen, a businessman, having no criminal antecedents to his credit and as such, he is entitled for anticipatory bail.

6. Per contra, learned A.G.A. opposed the prayer for anticipatory bail and it has been firmly submitted that a huge amount of money amounting to Rs. 2 crores has been grabbed by the present applicant in collusion with the other co-accused persons from the informant and her kitty groups. It is also submitted that ample evidence has been gathered in this regard during investigation, which transpires that all the accused persons have acted in criminal conspiracy with each other and the present applicant himself had refused to pay any money to the informant or her kitty group members.

7. In the present case, prima facie, it appears that there is no direct involvement of the present applicant in the commission of alleged crime and no money was delivered straightway to him or to his bank account. Investigation of the case is going on.

8. *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.

9. *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.

10. 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 filing of police report under Section 173(2) Cr.P.C. in the matter.

11. The application is **allowed**.

12. 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 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.

13. In case of default of any of the conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of interim protection granted to the applicant.

Order Date :- 21.11.2023

Shivangi