

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12276 of 2023

Applicant :- Surendra Nath Mishra

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

Counsel for Applicant :- Abhinav Shukla, Ram Shiromani Shukla

Counsel for Opposite Party :- G.A., Syed Irfan Ali

Hon'ble Nalin Kumar Srivastava, J.

1. Supplementary affidavit filed today is taken on record.
2. This application has been moved on behalf of the applicant **Surendra Nath Mishra** seeking anticipatory bail in Case Crime No. 208 of 2023, under Sections 419, 420, 467, 468, 471 IPC, P.S. Obra, District Sonbhadra.
3. Heard learned counsel for the applicant, learned counsel for the informant as well as the learned A.G.A. for the State and perused the record.
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. It is further submitted that the applicant is Lekhpal in the village concerned. The mutation proceedings are initiated before the Revenue Inspector as per the provisions of U.P. Revenue Code. It is also submitted that in this matter the mutation was made in the revenue record by the applicant in discharge of his official duties, as per the proceeding already taken by the Revenue Inspector. It is also submitted that the applicant had absolutely no knowledge that any stay order has been passed in the matter by the competent superior authority restraining to pass any order regarding mutation. The investigation of the case is going-on and the applicant is cooperating with the same. He is a government employee. Criminal history of the applicant has been explained sufficiently. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and will co-operate in the investigation and would obey all conditions of bail.
5. Learned A.G.A. and learned counsel for the informant have

vehemently opposed the prayer for anticipatory bail and submitted that on 25.8.2018 itself an application was moved by the informant to the District Magistrate, Sonbhadra to stay the proceedings of mutation in respect of the property in question. It is further submitted that only on the next day the mutation order was passed after submission of the said application. A fraud has been played by all the accused persons of this case and since the mutation order was made by the present applicant, his offence is more serious.

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

7. It reveals from the perusal of the record that the names of co-accused persons, who were family members of the informant, were wrongly mutated in the revenue record by the present applicant in collusion with the co-accused persons whereas a Will was existing in favour of the informant executed by his mother Smt. Raj Rani Chaddha, who later on died on 31.7.2018. F.I.R. was lodged on 8.9.2023 and investigation started, which is still going on. It also reveals that co-accused Anil Chaddha, who was beneficiary in the matter, has been granted protection by this Court on 4.10.2023 till submission of police report under Section 173(2) CrPC vide Criminal Misc. Writ Petition No. 15503 of 2023. It reflects from the perusal of the record that investigation of the case is going on and the present applicant is cooperating with the same and prima facie no custodial interrogation is required.

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, 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 filing of police report under Section 173(2) CrPC before the Competent Court.

11. The application is **allowed** accordingly.

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 protection granted to the applicant.

Order Date :- 11.12.2023

safi