

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12322 of 2023

Applicant :- Ashok Kumar Maurya And Another
Opposite Party :- State Of U.P. And Another
Counsel for Applicant :- Ashok Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This application has been moved on behalf of the applicants - **Ashok Kumar Maurya** and **Awanit @ Gaurav** seeking anticipatory bail in Complaint Case No. 3294 of 2010, under Sections 419, 420, 427, 452, 468, 504, 506 IPC, Police Station Gopiganj, District Bhadohi.
2. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.
3. It is submitted by the learned counsel for the applicants that applicants are innocent and they have apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against them. Allegations levelled against the applicants are false. It is further submitted an application U/S 482 No. 10746 of 2019 was preferred by all the accused persons in this case but however no relief was granted to them and a protection for 30 days only was granted by this Court vide order dated 25.3.2019. It is also submitted that no fraud has been played by the present applicants and the sale deed has not been executed in favour of the applicants and their names were not recorded in respect of the said property in the revenue records and as a matter of fact when the alleged sale deed was procured i.e. on 30.12.1985 at that time the applicant no.1 was aged about only 5 years and the applicant no.2 was not born. It is also submitted that against the summoning order passed by the Magistrate Court, a Criminal Revision No. 107 of 2019 was preferred which was partly allowed and against that order the complainant / opposite party no.2 also preferred an application U/S 482 No. 15803 of 2022 and the order passed by the Sessions Judge in the aforesaid Criminal Revision was kept as stayed and the summoning order dated 12.9.2018 passed by the Magistrate concerned became operative. It is further submitted that the dispute relates to purely of civil nature and the present applicants

are ready and willing to cooperate with the trial court. It is also submitted that a Civil Suit for cancellation of sale deed and at the same time a Civil Suit for permanent injunction were filed by Smt. Patti Devi, wife of the complainant, which are still pending. It is next submitted that a Suit for permanent injunction was also filed against the complainant side as well before the competent Civil Court at Bhadohi. No processes under Sections 82 and 83 CrPC have been issued against the applicants and the applicants have not been declared absconder. In case applicants are granted anticipatory bail, they 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 by playing fraud the landed property which was in the name of the wife of the complainant / opposite party no.2 was grabbed by the accused persons of this case. Offence is very serious.

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

6. In this matter from the perusal of the record it reveals that the named accused persons including the present applicants by playing fraud executed a sale deed in respect of the property of Smt. Patti Devi, the wife of the complainant through an imposter and they are trying to take forcible possession of the aforesaid property and the name of the vendee was also entered in the revenue records by playing fraud and in this respect revenue case was also filed and the mutation order was corrected. The named accused persons including the present applicants were summoned to face trial in the complaint case filed by the complainant for the offence under Sections 419, 420, 427, 452, 468, 504, 506 IPC by the Magistrate Court vide order dated 12.9.2018. From the perusal of the record it also reveals that the applicants are cooperating with the trial court. They have no criminal history to their credit and the dispute is purely of civil nature.

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 applicants 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 applicants till the end of trial.

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

10. In the event of arrest of the applicants, they shall be released on anticipatory bail on their 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 applicants shall make themselves available before the Court concerned on the date fixed in the matter and will cooperate in the trial.

(ii) The applicants 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 applicants shall not leave India without the previous permission of the Court and if they have passport, the same shall be deposited by them 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 applicants.

Order Date :- 8.11.2023

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