

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12305 of 2023

Applicant :- Neeraj Kumar Pandey

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

Counsel for Applicant :- Avaneesh Kumar Upadhyay, Virat Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav, J.

1. Heard Sri Avaneesh Kumar Upadhyay, learned counsel for applicant and learned A.G.A. for the State as well as perused the material available on record.
2. The present application for anticipatory bail has been filed by the applicant for protection in regard to Case Crime No.0447 of 2023, under Section 409 I.P.C., P.S.- Kotwali Ballia, District- Ballia.
3. In brief the prosecution story is that Chief Engineer Official Office U.P. lodged the present FIR against the personnel responsible for the irregularities in the construction work of sewer line being executed by Jal Nigam Construction Division, Valiya since 2006 in the Municipal Council area of Ballia District where 2 sewerage schemes were operated in Municipal Council, Ballia in 2006, Valiya Sewerage Scheme, City Zone Planning Office, State Sector Sewerage Approved 27.90/52.2272/- Crore and Ballia Sewerage Scheme Civil Line Zone Program U.I.D. S.S. M.Th. sanctioned original cost revised 44.7231/52.2272 crores. It is further alleged that the fact came to light in the investigation report dated 17.11.2018 that even after spending Rs.100.00 crore for Ballia Sewerage Scheme City Zone and a period of 12 years, the scheme could not be completed. Letter from the Office of Executive Engineer, UP Jal Nigam Ballia regarding Ballia Tivaraage Scheme Civil Line Zone 19.08.2019 I.I.T. B.H.U. as per the instructions to the firm, Jyoti Buildtech Pvt. Ltd. was directed to demolish the entire STP and do the work again to correct the spacing of reinforcement mat, but no action was taken by the Firm. Even after the report of I.I.T.B.H.U, the work was done at the block level and paid for

by the engineers, which comes in the category of wastage.

4. Learned counsel for the applicant submitted that the applicant is innocent and he has been falsely implicated in the present case. The applicant is junior engineer and at the time of alleged incident, the applicant was posted at site as Junior Engineer which has zero economic power in Jal Nigam Department, he has neither recommended for any payment nor he has paid any bill, he has just made record measurement and abstract on order of site incharge. Learned counsel for the applicant submitted that applicant being Junior Engineer having no property entrusted, no offence under Section 409 I.P.C. is made out against the applicant. The applicant has no criminal history. Learned counsel for the applicant further submitted that applicant has apprehension of imminent arrest and in case, applicant is released on anticipatory bail, he will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. opposed the prayer for anticipatory bail of the applicant and has submitted that the applicant with along with other co-accused, has dissolved the executive trust of the government property of UP Jai Nigam, Ballia and investigation is going on. The applicant is not cooperating in the investigation, therefore, keeping in view the seriousness of the allegations made against the applicant, he is not entitled to grant of anticipatory bail. The apprehension of the applicant is not founded on any material on record. Only on the basis of imaginary fear, anticipatory bail cannot be granted.

6. The Apex Court in judgment passed in the case of **P. Chidambaram Vs. Directorate of Enforcement (Criminal Appeal No.1340/10 dated 05.09.2019)** has held that grant of anticipatory bail particularly in economic offences would definitely hamper the effective investigation. In the cases of corruption the custodial interrogation of an accused is necessary because he/she may provide the information leading to discovery of material fact and relevant information.

7. Having regard to the material available on record and the nature of allegation against the applicant, in the considered opinion of this Court, it is not a fit case in which the applicant can be extended the benefit of anticipatory bail.

8. Accordingly, this application under Section 438 Cr.P.C. is dismissed. Applicant is advised to move regular bail application before the appropriate forum and if such application is given, the court below shall consider and disposed of the bail application expeditiously in accordance with law.

Order Date :- 21.11.2023
Krishna*