

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12522 of 2023

Applicant :- Amit Sharma

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

Counsel for Applicant :- Pankaj Sharma, Prashant Sharma

Counsel for Opposite Party :- G.A., Amit Kumar

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 -**Amit Sharma** in Case Crime No.55 of 2021, under Sections 420, 406, 467, 468, 471, 120-B, 507 IPC, Police Station - Sector-58, District - Gautam Buddha Nagar.

3. It is alleged in the F.I.R. that the present applicant along with other co-accused persons persuaded the informant to purchase a plot from its owner Jagmal. The consideration amount was settled as Rs.56,65,000/- and Rs.2 lakhs as advanced money were given through cheque in favour of Devendra Sharma by the informant. An agreement to sale was also prepared between the informant and the present applicant and Rs.10 lakhs through cheques and cash were also paid by the informant. Subsequently, some more amount was transferred to the bank account of the present applicant by the informant and cash rupees were also taken. A total sum of Rs.22,89,750/- was taken by all the accused persons from the informant and subsequently, he came to know that Jagmal, who is said to be the owner of the plot, had already expired in 2015 and forged documents had been shown to the informant. The money of the informant was not repaid and F.I.R. was lodged for this fraudulent act against the accused persons on 03.08.2023 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 no detail of any account of the alleged Jagmal or even of the present applicant has been given by the informant. It is also not clarified that as to how a huge amount of Rs.20 lakhs came into account of Jagmal. It is further submitted that how the money from the account of Jagmal, who was dead was transferred into the account of the present applicant. It is also submitted that the present applicant is not the owner of the landed property and no transaction took place between the present applicant and the informant. It is further submitted that the informant himself had taken Rs. 6 lakhs from the applicant and that was the amount which was returned by him in the bank account of the applicant but a concocted story has been made in this regard by the prosecution. It is next submitted that interim anticipatory bail was granted earlier in favour of the present applicant by the trial court on 08.08.2023 and the same has not been misused by him. It is next submitted that as a matter of fact, the applicant himself lodged an F.I.R. against Manish Kumar Sharma who is the friend of the informant for cheating and assault. It is next submitted that as a matter of fact, some Vijendra Tomer impersonated him as Jagmal and he also executed an agreement to sale in favour of Sudesh Kumar Singhal wherein Manish Kumar was a witness. It is also submitted that the criminal history of the accused applicant has been sufficiently explained. It is next submitted that he has not been a beneficiary in anyway for agreement to sale executed by Jagmal alias Vijendra in favour of Sudesh Kumar Singhal. It is further submitted that wrongful gain, if any, has been enjoyed by co-accused, Jagmal (Vijendra). It is also submitted that the applicant has been cooperative with the investigation so far and as such, he is entitled for anticipatory bail.

6. Learned A.G.A. opposed the prayer and it has been submitted that Jagmal was died in 2015 but the applicant along with other co-accused persons took the informant to an imposter claiming himself to be as Jagmal, the real owner of the property whereas the present applicant was very well knowing that the said person was not Jagmal and Jagmal had already expired. It is further submitted that the detail of the bank account of the present applicant wherein the money was deposited has been specifically mentioned in the F.I.R. itself. It is next submitted that there is absolutely no evidence of the allegation that Rs.6 lakhs were borrowed by the informant from the present applicant. It is next submitted that during investigation, sufficient material has been collected against

the present applicant so far and as such, he is not entitled for anticipatory bail.

7. *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.

8. *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.

9. 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.

10. The application is **allowed**.

11. 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.

12. 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 :- 20.12.2023

Shivangi