

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12388 of 2023

Applicant :- Mohammad Kasim And Another

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

Counsel for Applicant :- Saiyad Iqbal Ahmed

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Mr. Aditya Gupta, Advocate has filed Vakalatnama today on behalf of opposite party no.2. Let the same be taken on record.

2. Heard Saiyad Iqbal Ahmed, learned counsel for the applicants, learned Additional Government Advocate for the State and Mr. Aditya Gupta, learned counsel for the informant.

3. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No.662 of 2023, under Sections 147, 323, 504, 506, 406, 420, 386 IPC, Police Station Civil Lines, District Moradabad.

4. Learned counsel for the applicants submits that the applicants have been falsely implicated in the present case, in fact, no such incident has taken place. The applicants have never committed any offence as alleged in the impugned FIR. The incident is alleged to have taken place between 16.03.2023 to 20.03.2023 i.e. about four months and 19 days in lodging the FIR for which no explanation has been mentioned. Earlier the applicants preferred Criminal Misc. Writ Petition No.13134 of 2023 before this Court and this Court vide order dated 22.08.2023 has granted protection to the applicants till filing of police report under Section 173 (2) Cr.P.C. Now charge sheet has been submitted. He further submits that Nazim alongwith Parvez Alam and Afroz Ali are having Firm, namely, M/s Khera Mettles Manufacturing Pvt. Ltd. in which Nazim is one of the Director of the Firm. There is a business dispute between the informant and Firm, namely, M/s Khera Mettles Manufacturing Pvt. Ltd. and they are having business transaction with the Firm, namely, M/s Future Energy in which the opposite party no.2 is working in the capacity of agent between the above two Firm. The applicants are having a small cloth shop and they have no concern with the transaction between M/s Khera

Mettles Manufacturing Pvt. Ltd and opposite party no.2 but the opposite party no.2 unnecessarily dragged the applicants just being the father and brother of Nazim. He further submits that the dispute is purely a business dispute and is civil in nature but the same has been given criminal colour. The applicants have never extended any kind of threat to the informant, hence, no offence under Section 504 and 506 IPC is made out against the applicants but the investigating officer without appreciating all these facts has submitted charge sheet against the applicants alongwith co-accused persons and the court below has taken cognizance and summoned the applicants to face trial, hence, the applicants have apprehension of imminent arrest and in case, the applicants are released on anticipatory bail, they will not misuse the liberty and would co-operate with the trial.

5. Learned A.G.A. as well as learned counsel for the informant vehemently opposed the prayer for anticipatory bail of the applicants and has prayed for rejection of the same by submitting that at the stage of submission of charge sheet, credible evidence has been found against the applicants. The allegations are very serious and keeping in view the seriousness of the allegations levelled against the applicants, applicants are not entitled to grant of anticipatory bail, hence, the instant application is liable to be rejected.

6. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicants, they are directed to be enlarged on anticipatory bail as per the Constitution Bench judgment of the Apex Court in the case of *Sushila Aggarwal vs. State (NCT of Delhi)- 2020 SCC Online SC 98*. The future contingencies regarding anticipatory bail being granted to applicants shall also be taken care of as per the aforesaid judgment of the Apex Court.

7. In the event of arrest, the applicants shall be released on anticipatory bail. Let the applicants-**Mohammad Kasim and Mohd. Shahrukh**, involved in the aforesaid crime be released on anticipatory bail till conclusion of trial on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

(i) 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 them from disclosing such facts to the Court or to any police officer;

(ii) The applicants shall not leave the country during the currency of trial without prior permission from the concerned trial Court.

(iii) The applicants shall surrender their passport, if any, to the concerned Court forthwith. Their passport will remain in custody of the concerned Court.

(iv) The applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicants.

(v) In case, the applicants misuse the liberty of bail, the Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of ***Sushila Aggarwal vs. State (NCT of Delhi) 2020 SCC Online SC 98.***

(vi) The applicants shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of their bail and proceed against them in accordance with law.

8. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicants.

9. With the aforesaid observations/ directions, the application is **disposed of.**

Order Date :- 29.11.2023

Ajeet