Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 12409 of 2023

Applicant :- Suresh Rajvani @ Suresh Kumar
Opposite Party :- State Of U.P. And 2 Others
Counsel for Applicant :- Subham
Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned AGA and perused the material available on record.

2. This application for anticipatory bail has been filed by applicant- **Suresh Rajvani @ Suresh Kumar** in connection with Criminal Case No. 6089 of 2022 arising out of Case Crime No. 650 of 2019, under section 307 IPC, P.S. Shahganj, District- Agra.

3. The informant who was traveling on his motor cycle along with his friend Irfan was shot fire by two unknown person with intention to kill him coming on another motor cycle and he sustained fire arm injury. FIR was lodged on 19.11.2019 against two unknown persons. After investigation now the charge sheet has been submitted and during investigation the name of the present applicant came into light.

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. Charge sheet in the matter has been submitted. It is further submitted that the applicant is not named in the FIR, no role of firing has been assigned to him and the main role of firing has been assigned to the co-accused Jai Prakash. It is further submitted that during investigation anticipatory bail was moved by the applicant in Cr. Misc. Anticipatory Bail Application No. 12175 of 2021 and vide order order dated 20.07.2021 he was granted anticipatory bail till submission of police report under Section 173 (2) Cr.P.C. by this Court. It is further submitted that that the said liberty has not been misused by the applicant and during investigation he has been cooperative. It is also submitted that the medical report does not corroborate the prosecution version and

the injury caused to the injured is not grevious or serious. It is also submitted that the applicant has one solitary criminal history, which has been explained in the affidavit. In case applicant is granted anticipatory bail, he will not misuse the liberty of bail and would obey all conditions of bail.

5. Learned A.G.A. has opposed the prayer for anticipatory bail but however, he could not dispute this factual aspect that during investigation the present applicant has been cooperative.

6. It reveals from the perusal of the record that no process under Section 82/83 Cr.P.C. has been issued against the applicant till date and he has cooperated during the investigation. After submission of charge sheet no custodial interrogation is required.

7. Although the charge sheet has been submitted in this matter but 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.

8. 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.

9. 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, llikelihood 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.

10. In **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Hon'ble Apex Court has held that :

"11. A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170CrPC which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge-sheet forthwith and proceed in accordance with the procedure laid down under Section 173CrPC. It has been rightly observed that in such a case the Magistrate or the Court is required to

invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87 Cr.P.C that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

12. In sofar as the present case is concerned and the general principles under Section 170Cr.P.C, the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody are itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge-sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

11. Hence, 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 conclusion of trial in the matter.

12. The anticipatory bail application is **allowed** accordingly.

13. In the event of arrest of the applicant in the aforesaid case crime, 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 the Court concerned with the following conditions :-

i. 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence.

ii. The applicant shall not pressurize/ intimidate the prosecution witness.

iii. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

iv. The applicant shall not leave India without prior permission of the Court and if he has passport, the same shall be deposited by her before the S.S.P./S.P. concerned.

14. In case of breach of any of the above conditions, the Investigating Officer shall be at liberty to file appropriate application for cancellation of anticipatory bail of the applicant in accordance with law.

Order Date :- 29.11.2023
Fhd

Digitally signed by :-
FAHAD NIYAZ
High Court of Judicature at Allahabad