

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 12460 of 2023

Applicant :- Anand Kumar Mishra And 2 Others

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

Counsel for Applicant :- K.K.Rao,Piyush Pandey

Counsel for Opposite Party :- G.A.,Pradeep Kumar Srinette

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicants and learned Additional Government Advocate for the State. Mr Mukul Mishra, Advocate, holding brief of Mr P. K. Srinette, learned counsel for the informant is also present.

2. Supplementary affidavit filed today is taken on record.

3. Learned counsel for the applicant is permitted to amend the sections in the bail application as well as its affidavit.

4. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Case Crime No. 36 of 2022, under sections 406, 409, 420 I.P.C., P.S. Kotwali Nagar, District Hamirpur during the pendency of trial, directly before this court, without approaching the court below. In this regard, learned counsel for the applicants has placed reliance upon the Full Bench judgment of this Court in the case of **Ankit Bharti and others Vs. State of U.P. and another, 2020(3) ADJ 575** in which the Bench has directed to spell out the extraordinary and special reasons for coming to the High Court directly. After perusal of those pleadings/reasons in this regard, this Court is satisfied that the reasons mentioned therein are quite convincing to entertain the present anticipatory bail application before this Court itself.

5. In short, as per the prosecution version, applicant no.1, namely, Anand Kumar Mishra, who is said to be Managing Director of Bramhasmi Nidhi Limited Company, applicant no. 2, namely, Narendra Kumar Pandey and applicant no. 3, namely, Priya Mishra are said to have opened a Branch of the said company in District Hamirpur. Informant and others are said to have joined the said company as agents. It is alleged that company had offered a scheme in which the investment done by customers would be double in five years and in the said scheme many investors invested their money but after maturity company had not returned the money to its investors and the commission agents were also not paid their commissions and after some time company is said to have been closed.

6. Learned counsel for the applicants submits that applicants, are innocent and have apprehension of arrest in the above mentioned case, whereas there is no credible evidence against them. It is submitted that applicants The applicants are having definite apprehension that they may be arrested by the police any time.

7. Learned counsel for the parties submitted that the matter has been settled between the parties. It is further submitted that entire dues of the informant/commission agents have been paid. It is further submitted that after receiving the entire due amount to the informant and other commission agents had given their notorial affidavit that the entire amount of the Commission which was due to them had been released by the company. To which learned counsel for the informant does not dispute the aforesaid aspects.

8. Learned counsel for the informant as well as learned AGA has opposed the prayer for bail, but could not dispute the said facts.

9. 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.

10. In the event of arrest, the applicants shall be released on anticipatory bail. Let the applicants Anand Kumar Mishra, Priya Mishra and Narendra Kumar Pandey, involved in the aforesaid crime be released on anticipatory bail on each of them 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:-

(1) The applicants shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation;

(2) 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; and

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

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

(5) 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.

(6) 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**.

(7) 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.

11. 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.

12. With the aforesaid observations/ directions, the application stands disposed of.

Order Date :- 9.11.2023
RavindraKSingh