

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12477 of 2023

Applicant :- Jay Prakash Upadhyay

Opposite Party :- State of U.P.

Counsel for Applicant :- Yogesh Kumar Singh, Satya Prakash Rai

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised. Heard Sri C.L. Pandey, learned Senior Advocate assisted by Sri Yogesh Kumar Singh, learned counsel for the applicant as well as Sri D.K. Singh and Sri Anit Kumar Shukla, learned A.G.As. for the State and also perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in F.I.R./Case Crime No. 709 of 2023, under Sections 419, 420, 467, 468, 471, 147, 148, 352, 406, 120B IPC, Police Station Gulriha, District Gorakhpur, with a prayer to enlarge him on anticipatory bail.

3. As per prosecution story, the applicant alongwith co-accused person Sanjay Upadhyay, is stated to brokered an agreement between one Vinod Kumar Srivastava, Alok Kumar Srivastava, Pradeep Kumar Srivastava and Ashok Kumar Srivastava with the father of the informant on 6.1.2008 for a consideration of Rs. 4 lakhs, which was worth crores. It is also alleged in the FIR that on 6.9.2012 at about 8.30 pm the applicant and other co-accused persons are stated to have barged into the house of the informant and threatened them leading to pain in chest of the father of the informant, who was admitted in a hospital on 7.9.2012.

4. Learned Senior Counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has the apprehension of his arrest. The applicant has nothing to do with the said offence as alleged by the prosecution. Learned Senior Counsel has next stated that the FIR is delayed by about 15 years and there is no explanation of the said delay caused. Even the FIR is delayed by 11 years to the offence of 6.9.2012. The present FIR is just to harass the applicant. In all, three FIRs have been instituted against the applicant on 24.5.2023, 11.8.2023 and 12.8.2023 at the behest of same informant and all

are delayed.

5. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further submitted that the criminal history of three other cases assigned to the applicant has been explained, as he is on bail in all those cases. He is not a previous convict. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

6. On the other hand, learned A.G.As. have vehemently opposed the prayer for grant of anticipatory bail on the ground of criminal history of the applicant, but they could not dispute the factum of bail in lodging the FIR.

7. On due consideration to the arguments advanced by the learned counsel for the parties, the fact that there is inordinate delay of 15 years in lodging the FIR, if otherwise the case of the applicant for bail is made out, he cannot be kept languishing in jail on account of his criminal antecedents, in light of the judgement of **Prabhakar Tewari Vs. State of U.P. and Another, 2020 (11) SCC 648**, wherein the Apex Court has observed that pendency of several criminal cases against an accused itself cannot be a basis for refusal of bail, if otherwise his case for bail is made out. .

8. In view of the law laid down by the Apex Court in the case of "**Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98**", the applicant is entitled to be granted anticipatory bail in this case.

9. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is **allowed**.

10. In the event of arrest of the applicant, **Jay Prakash Upadhyay** involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

- i. that the applicant shall make himself available for interrogation by a police officer as and when required;
- ii. that 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;
iii. that the applicant shall not leave India without previous permission of the court;
iv. that the applicant shall not tamper with the evidence during the trial;
v. that the applicant shall not pressurize/ intimidate the prosecution witness;
vi. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

11. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

12. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 23.11.2023
Shalini