

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12616 of 2023

Applicant :- Prashant Ojha

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

Counsel for Applicant :- Vibhu Rai, Dhananjai Rai

Counsel for Opposite Party :- G.A., Ranjeet Kumar Yadav

Hon'ble Nalin Kumar Srivastava, J.

1. This application has been moved on behalf of the applicant **Prashant Ojha** seeking anticipatory bail in Case Crime No.297 of 2023, under Sections 420, 467, 468, 471, 447, 506 IPC, P.S. Banna Devi, District Aligarh.

2. Heard learned counsel for the applicant, learned counsel for the informant as well as the learned A.G.A. for the State and perused the record.

3. 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. It is further submitted that the present applicant is the bonafide purchaser, who has purchased the plot in dispute, after paying the requisite consideration amount. It is also submitted that the revocation of the power of attorney was not proper and was not in consonance with the relevant rules of U.P. Registration Rules. It is further submitted that no forgery has been committed by the present applicant and he has absolutely no role in the execution or alleged revocation of the power of attorney. It is also submitted that even in the sale deed executed in favour of the informant the details of power of attorney have been mentioned. Applicant has no criminal history to his credit. The investigation of the case is going-on and applicant is cooperating with the same. It is also submitted that the informant has already filed a Civil Suit before the competent Civil Court at Aligarh against Harprasad Sharma and others and in this way civil litigation is pending between the parties. It has been submitted that in case applicant is granted anticipatory bail, he will not misuse the liberty of bail and will co-operate in the investigation and would obey all conditions of bail.

4. Learned A.G.A. and learned counsel for the informant have opposed the prayer for anticipatory bail and vehemently submitted

that the present applicant was well known to the fact that the power of attorney has been cancelled and no sale deed could be executed on the basis thereof. It is also submitted that on the basis of forged power of attorney the land, which was already sold, was again sold in this matter, however, the learned AGA could not dispute this fact that the sale deed has been executed in favour of the present applicant after taking requisite consideration amount and the applicant appears to be a bonafide purchaser.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. It appears from the perusal of the record that the plot in dispute was purchased by one Munni Devi from Chhetrapal Singh Yadav on the basis of a registered power of attorney on 4.6.1990 and the informant purchased the said plot from Munni Devi by way of a registered sale deed dated 26.7.2007 and she was in possession over the same but subsequently she came to know that on the basis of some forged power of attorney dated 23.5.1990, which was already revoked on 6.7.1990, co-accused Harprasad Sharma has purchased the aforesaid plot and his associate Nirbhay Singh also executed a sale deed in favour of his institution M.K.R. Foundation, Punit Mishra, Prashant Ojha and Harprasad Sharma and for some other persons. F.I.R. was lodged on 25.5.2023 and investigation started, which is still going on. It also reveals from the perusal of the record that the applicant has been cooperative with the investigation so far. The present case appears to be of civil nature.

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, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on 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) CrPC before the Competent Court.

10. The application is **allowed** accordingly.

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 protection granted to the applicant.

Order Date :- 11.12.2023

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