

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12635 of 2023

Applicant :- Teekam Singh

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

Counsel for Applicant :- Jitendra Pal Singh Jadaun, Seema Singh Jadaun

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. This application has been moved on behalf of the applicant **Teekam Singh** seeking anticipatory bail in Case Crime No. 470 of 2022, under Sections 147, 323, 406, 420, 504, 506, 467, 468, 471 IPC, Police Station Khair, District Aligarh.
3. It is alleged in the F.I.R. that on the false pretext of providing employment, the named accused persons including the present applicant grabbed a huge amount of money from several persons and forged appointment letter was also issued to the informant but however, the fraud was disclosed and an F.I.R. was lodged on 01.09.2022 and investigation started, which is still going on.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. Allegations levelled against the applicant are false. It is further argued that investigation is going-on and till date no charge-sheet has been submitted against the accused applicant. It has been submitted that in case applicant is granted anticipatory bail, he shall not misuse the liberty of bail and would obey all conditions of bail.
5. It is further submitted that no money has been given by the informant or any person to the present applicant. It is further submitted that no money has been deposited in the bank account of the present applicant. It is also submitted that the applicant has no criminal history to his credit and the whole prosecution story is concocted. It is next submitted that he has been cooperative with the investigation of the case so far. It is further submitted that as a

matter of fact, co-accused person Gaurav had hired bolero car of the applicant for the informant and for the payment of rent Rs.50,000/- were transferred by the informant in the bank account of the applicant by PhonePe but when he required some money on his request Rs.10,000/- were sent by the applicant in the account of the informant and that money was never transferred in favour of the present applicant in connection with the alleged offence. It is next submitted that the process under Section 82 Cr.P.C. has been obtained by the I.O. from the court but that does not make any adverse effect upon the right of the applicant because he was not absconding or avoiding the service of the process sent by the court.

6. Learned A.G.A. has opposed the prayer for anticipatory bail and it has been vehemently argued that a sum of Rs.60,000/- were transferred in the bank account of the present applicant which was in connection with the alleged offence. It is further submitted that process under Section 82 Cr.P.C. has been issued against the present applicant and he is a proclaimed offender and as such he is entitled for anticipatory bail.

7. It appears from the perusal of the record that first anticipatory bail application was moved by the present applicant before the Sessions court on 05.06.2023 and the same was rejected on 28.06.2023. Subsequently, second bail application was filed on 31.07.2023 and the same was rejected on 25.08.2023 by the Sessions court, thereafter, the third anticipatory bail was filed before the Sessions court on 29.08.2023 but the same was rejected on 10.10.2023. In the meanwhile, on 01.07.2023, non-bailable warrant was issued against the present applicant whereas he was taking recourse of the legal forum and he was not absconder and in the same manner, process under Section 82 Cr.P.C. was issued on 03.11.2023 under the instructions of the court and the present applicant filed present anticipatory bail application before this Court on 07.11.2023. Thus it appears that the accused applicant, who has a legal right to move for bail during interregnum period, was engaged in taking legal recourse and during this period, process under Section 82 Cr.P.C. was issued against him. Whether the conduct of the applicant was genuine and proper during the aforesaid entire period, is a question to be determined. It appears from the aforesaid discussion that the applicant was moving anticipatory bail application again and again before the Sessions court and in that way, he was misusing the benefit of legal procedure and he did not knock at the door of the High Court. After rejection of the third bail application, he did not appear before the court concerned and process under Section 82 Cr.P.C.

was issued against him.

8. From the above, it is clear that when anticipatory bail moved by the applicant before this Court on 07.11.2023, he was a proclaimed offender.

9. *In Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1*, the Hon'ble Apex Court has settled 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.

10. The conduct of the applicant falls within the ambit of the law promulgated by Hon'ble Apex Court in *Prem Shankar Prasad Versus State of Bihar and Another, 2021 SCC OnLine Supreme Court 955*. In the facts of that case, charge-sheet was filed under Sections 406, 420 IPC against the accused and thus it was explicit that a prima facie case against the accused was found. From the record, it reveals that the arrest warrant was issued by the Magistrate against the accused and thereafter proceedings under Sections 82, 83 Cr.P.C. had been initiated pursuant to the order passed by the Magistrate. Only thereafter the accused moved an application before the trial court for anticipatory bail, which was rejected by the Sessions Court. However, subsequently anticipatory bail was granted to the aforesaid accused by the High Court and when the matter came before the Hon'ble Apex Court, it was observed like this.

"19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that respondent No. 2 - accused is absconding and even the proceedings under sections 82-83 of Cr. P.C. have been initiated as far as back on 10.01.2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to respondent No. 2 - accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc., which came to be considered by learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under sections 82-83 of Cr. P.C. by simply observing that "be that as it may". The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

20. In the case of State of Madhya Pradesh v. Pradeep Sharma (Supra), it is observed and held by this court that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr. P.C., he is not entitled to relief of anticipatory bail."

11. In view of the law laid down by the Hon'ble Apex Court, I deem it not a fit case to grant anticipatory bail to the present applicant. Such a person, who does not cooperate with the I.O./Court, is not entitled for any relief from this Court by way of granting anticipatory bail. Prayer made in the application is refused.

12. The anticipatory bail application is rejected.

Order Date :- 20.11.2023

Shivangi