

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12668 of 2023

Applicant :- Shiv Shakti Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Arun Kumar Tiwari

Counsel for Opposite Party :- G.A., Sanjay Singh

Hon'ble Shekhar Kumar Yadav, J.

1. Heard Mr. Arun Kumar Tiwari, learned counsel for the applicant, learned Additional Government Advocate for the State and Mr. Dileep Kumar Goswami, holding brief of Mr. Sanjay Singh, learned counsel for the informant.

2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Sessions Trial No.18 of 2018 arising out of Case Crime No.487 of 2015, under Sections 387, 420 and 506 IPC, Police Station Kotwali Jalaun, District Jalaun.

3. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case just to harass the applicant in fact no such incident has taken place as alleged in the impugned FIR. The applicant has never committed any offence as alleged in the impugned FIR. Initially, an FIR was lodged against the applicant in which final report was submitted before the court below. Being aggrieved, the informant filed protest petition upon which the applicant was summoned and subsequently cognizance has been taken to face trial under the above mentioned sections. Being dissatisfied, the applicant and his brother co-accused Shiv Raj Singh has filed Criminal Misc. Application u/s 482 Cr.P.C. No.24282 of 2018 in which protection was granted vide order dated 08.08.2018 and the same was extended time to time. In the meantime, the court vacated the interim protection in view of Asian Resurfacing of Road Agency Pvt. Ltd and another vs. Central Bureau of Investigation issuing the summon against the applicant. He further submits that admittedly there is a civil dispute pending between the parties over a certain land and the informant in order to frustrate the purpose of the lease has filed Original Suit No. 238/2013 (Smt. Gayatri vs. Shivraj Singh) in the court of the Civil Judge (Junior Division), Jalaun seeking an injunction. The temporary injunction was refused by the trial court

and a Misc. Appeal filed from the order of Civil Judge dated 26.10.2013 rejecting the temporary injunction application was also dismissed by the Additional District Judge vide order dated 18.11.2013 passed in Misc. Civil Appeal no. 53 of 2013. Against the aforesaid orders, Writ-C No. 4968 of 2014 has been filed before this Court wherein this Court has invited a counter affidavit but no interim relief has been granted. He further submits that the Magistrate, however, going by the protest and looking to the statements of the informant and his wife alone have summoned the applicant. The statements of the informant and his wife are nothing but bald allegations without any tangible evidence to support the prosecution case of trespass, extortion, cheating and realization of Goonda tax in the sum of Rs. 5 lacs about which there is no evidence in the case diary. He further submits that the parties have entered into compromise and on the basis of compromise, the said suit was decided. He further submits that the dispute is purely civil in nature but has given criminal colour.

4. Learned A.G.A. as well as learned counsel for the informant vehemently opposed the prayer for grant of anticipatory bail of the applicant and have submitted that he has no knowledge about the compromise entered into between the parties.

5. Hence without expressing any opinion on the merits of the case and considering the nature of accusations and antecedents of applicant, he is 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 applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.

6. In the event of arrest, the applicant shall be released on anticipatory bail. Let the applicant-**Shiv Shakti Singh**, involved in the aforesaid case crime be released on anticipatory bail till conclusion of trial on 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:-

(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.

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

(iii) The applicant shall surrender his passport, if any, to the concerned Court

forthwith. His passport will remain in custody of the concerned Court.

(iv) The applicant shall file an undertaking to the effect that he 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 applicant.

(v) In case, the applicant misuses 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.***

(vi) The applicant 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 his bail and proceed against him in accordance with law.

7. 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 applicant.

8. With the aforesaid observations/ directions, the application is **disposed of.**

Order Date :- 28.11.2023

Ajeet