

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12681 of 2023

Applicant :- Raj Kumar Prasad

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Atul Kumar Shahi

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Heard learned counsel for applicant as well as Sri V.K.S. Parmar, learned A.G.A. for State and also perused the material available on record.
3. The present application for anticipatory bail has been filed for protection in regard to FIR/Case Crime No. 461 of 2023, under Section 409 I.P.C., P.S.- Bairia, District- Ballia.
4. As per prosecution story, the applicant, who happens to be the Secretary in the concerned Gram Panchayat, is stated to have embezzled an amount of Rs. 24,08,642/- as he had only undertaken work worth Rs. 24,0394/- only, and in addition to it, no records were sent regarding the payment of Rs. 1,33,277/-.
5. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. Learned counsel has further stated that an inquiry was instituted against the applicant and he was suspended as such. Subsequent to it, he was suspended on 16.6.2023 and during the inquiry, charge sheet was filed against the applicant by the authorities of the department. The applicant has filed his objections to the said charge sheet, but in the meantime, the FIR was instituted the very next day of filing the charge sheet. It is further stated that the FIR has been instituted in contravention of Government Order 611-Ka-1-2005 dated 19.7.2005, wherein it is stated that FIR could only be instituted after the applicant is found guilty and the inquiry report has been filed. Herein, the inquiry is still pending, as such, he has been made an accused out of vengeance. Learned counsel has further stated that the criminal history of the applicant stands explained, as the two FIRs instituted against him are of trivial nature being FIR No. 98 of 2011 u/s 419, 420, 467, 468, 471, 120-B IPC, and FIR No. 30 of 2020 u/s 166-A, 174, 204 IPC. The applicant has not applied

for bail in the said cases.

6. Learned counsel has also relied on the Government Order No. 74/Karmik-1-2009/13/3/2007 dated 23.1.2009, whereby it has been stated that if the work is found of poor quality, the concerned officer shall be granted a time of one month to get it corrected. Herein, no time has been granted to the applicant and the FIR has been instituted. It is next stated that the police is running after him and the applicant is running from pillar to post, and as such, has filed his objections by post only, as there is clear apprehension of his arrest. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

7. Per contra, learned A.G.A. has vehemently opposed the prayer for anticipatory bail on the ground that there is an embezzlement of Rs. 25,41,919/- causing heavy loss to the State Exchequer, and the applicant has a criminal history of two cases in which he is not on bail.

8. Considering the rival submissions advanced by the learned counsel for the parties and also the fact that huge amount has been embezzled, coupled with the fact that the applicant has criminal history of two cases and in neither of them, he is on bail, I do not find it a fit case for grant of anticipatory bail to the applicant as the arguments advanced by learned counsel for the applicant pertain to regular bail application and cannot be agitated at this stage u/s 438 Cr.P.C.

9. In view of the above, the present anticipatory bail application is found devoid of merits and is, accordingly, **rejected**.

10. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case.

(Justice Krishan Pahal)

Order Date :- 6.12.2023

Shalini