

Court No. - 71

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438
CR.P.C. No. - 13131 of 2023

Applicant :- Yogesh Rathaur

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

Counsel for Applicant :- Prabhat Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. Heard learned counsel for the applicant and learned Additional Government Advocate for the State.
2. This anticipatory bail application (under section 438 Cr.P.C.) has been moved seeking bail in Complaint Case No. 45 of 2023, under Sections 18(C), 18(A)(i), 18(A)(VI), 27(B)(ii), 27(D) and 28 of Drugs & Cosmetics Act, 1940, P.S.- Shamsabad, District- Agra, during the pendency of trial.
3. As per prosecution story, applicant's shop was inspected on 18.12.2020 and certain injection is said to have been recovered, thereafter, Drugs Inspector filed a complaint against the applicant before the court of learned Additional District & Sessions Judge (Special Court), under Section 36AB of Drugs & Cosmetics Act, 1940, Court No.8, Agra, thereafter, applicant was summoned on 28.02.2023 to face trial under Section 18(C), 18(A)(i), 18(A)(VI), 27(B)(ii), 27(D) and 28 of Drugs & Cosmetics Act.
4. It is further submitted that applicant is a student of IInd year Diploma in Pharmacy and studying in DPS College of Pharmacy Bakalpur and also preparing for competitive examination and he has falsely been implicated in the present case. It is further submitted that on identical place one accused Muuna Lal who was also implicated by the same complainant on the same day spot inspection dated 18.12.2020 and complaint dated 28.02.2023 in same sections have been granted anticipatory bail vide order dated 6.7.2023 annexed as Annexure No. 3 to the present anticipatory bail application.
5. Learned A.G.A. for the State has opposed the prayer for anticipatory bail of the applicant.
6. On due consideration to the arguments advanced by learned counsel for the applicant as well as learned A.G.A. and considering the nature of accusations and antecedents of the applicant, the applicant is liable to be enlarged on anticipatory bail in view of the judgment of Supreme Court in the case of **Sushila Aggarwal Vs. State (NCT of Delhi), (2020) 5 SCC 1**. The future contingencies regarding the anticipatory bail being granted to applicant shall also be taken care of as per the aforesaid judgment of the Apex Court.
7. In view of the above, the anticipatory bail application of the applicant is allowed.

8. Let the accused-applicant Yogesh Rathaur be released forthwith in the aforesaid complaint case on anticipatory bail till the conclusion of trial on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:-

1. The applicant shall not leave India during the currency of trial without prior permission from the concerned trial Court.

2. The applicant shall surrender his passport, if any, to the concerned trial Court forthwith. His passport will remain in custody of the concerned trial Court.

3. 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 them from disclosing such facts to the Court or to any police officer;

4. 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 applicants.

5. In case, the applicant misuses the liberty of bail, the trial Court concerned may take appropriate action in accordance with law and judgment of Apex Court in the case of Sushila Aggarwal and others Vs State (NCT of Delhi) and another, (2020) 5 SCC 1.

6. 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 them in accordance with law.

9. With the aforesaid directions, this application stands disposed of finally.

Order Date :- 5.12.2023

RavindraKSingh