

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 12930 of 2023

Applicant :- Omendra Kumar Srivastava

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

Counsel for Applicant :- Abhishek, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Anurag Khanna, learned Senior Counsel assisted by Sri Abhishek, learned counsel for the applicant and Sri S.P. Pandey, learned A.G.A. for the State as well as perused the record.
3. The present anticipatory bail application has been filed on behalf of the applicant in Case Crime No.0210 of 2023, registered under Sections 419, 420, 467, 468, 469, 471 IPC and 66 D of I.T. Act at Police Station- Surajpur, District Gautambudh Nagar with a prayer to enlarge him on anticipatory bail.
4. As per prosecution story, one Mohd. Kashif, who is the resident of Noida, Ghaziabad Gautambudh Nagar, is stated to have made fake accounts on social media showing himself to be in close proximity with the Prime Minister of India and other Cabinet Ministers and had posted photographs of them online and had duped several persons by it.
5. Learned Senior Counsel for the applicant has stated at Bar that the applicant is not named in the FIR. Even the final report (charge-sheet) has been submitted against the named accused person Mohd. Kashif only on 17.07.2022 and the investigation was complete in the said final report. Subsequent to the submission of final report, the Investigating Officer had issued a notice under Section 160/91 Cr.P.C. on 24.08.2023.
6. Learned Senior Counsel has further stated that the applicant appeared before the Investigating Officer on 26.08.2023. The applicant got apprehensive of his arrest as the demeanor of the Investigating Officer was against him. The applicant applied for anticipatory bail before the Sessions Judge, Gautambudh Nagar on 05.09.2023 and in the meantime, despite the said anticipatory bail application being pending, the Investigating Officer filed an application for issuing non-bailable warrant before the Magistrate concerned on 18.09.2023 and the same

was issued the next day on 19.09.2023.

7. Learned Senior Counsel has further stated that even the applicant had filed objections to the said issuance of non-bailable warrant before the court concerned as the anticipatory bail application of the applicant was pending before the court concerned. The informant, herein, is a Police Officer and he is hell-bent on getting the applicant behind bars somehow or the other.

8. Learned Senior Counsel has further stated that in the rejection order, it has come up that the name of the applicant has come up in the complaint case filed by the Enforcement Directorate under the Prevention of Money Laundering Act before the Special Judge, Ante-Corruption CBI/PMLA, Ghaziabad. The said averment is also wrong as the name of the applicant has come up in the statement of one Amit Kumar Singh. It is mentioned in the said complaint that he got acquainted with the named accused person Mohd. Kashif through the applicant at a hotel.

9. Learned Senior Counsel has further stated that the Investigating Officer has also recorded the statement of the said witness Amit Kumar Singh and he has reiterated almost the same allegations in his statement. Learned Senior Counsel has further stated that introducing a person to another does not tantamount to any crime whatsoever. There is no evidence against the applicant whatsoever rather the beneficiary of certain amount Ms. Tanu Sharma in the said P.M.L.A. case has been enlarged on anticipatory bail by the Additional Sessions Judge, Court No.1, Gautambudh Nagar vide order dated 09.05.2023 passed in Anticipatory Bail Application No.2338 of 2023. The case of the applicant is at a better footing to the said co-accused person Tanu Sharma.

10. Learned Senior Counsel has further stated that there are no criminal antecedents of the applicant. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. The applicant has apprehension of his arrest. Learned counsel for the applicant undertakes that he has co-operated in the investigation and is ready to do so in trial also failing which the State can move appropriate application for cancellation of anticipatory bail.

11. Per contra, learned A.G.A. has vehemently opposed the anticipatory bail application on the ground that the matter is of

serious in nature as an offence of under Prevention of Money Laundering Act is made out against the applicant, but he could not dispute the fact that the name of the applicant has come up only in the statement of one Amit Kumar Singh that too of introducing him to the named accused person Mohd. Kashif.

12. On due consideration to the arguments advanced by learned Senior Counsel for the applicant as well as learned A.G.A., taking into consideration the fact that no overt act has been assigned to the applicant of having committed any offence whatsoever except the fact that he introduced the named accused person Mohd. Kashif to Amit Kumar Singh coupled with the fact that the co-accused person Tanu Sharma has been enlarged on anticipatory bail, 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.

13. In view of the above, the anticipatory bail application of the applicant is allowed. Let the accused-applicant- **Omendra Kumar Srivastava** be released forthwith in the aforesaid case crime (supra) on anticipatory bail till the conclusion of trial on furnishing a personal and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

- (i). that the applicant shall make himself available for interrogation by a police officer as and when required;
- (ii). 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 him from disclosing such facts to the court or to any police officer or tamper with the evidence;
- (iii). that the applicant shall not leave India without the previous permission of the court;
- (iv). that the applicant shall not pressurize/ intimidate the prosecution witness;
- (v). that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;
- (vi). that in case of breach of any of the above conditions the court concerned shall have the liberty to cancel the bail.

14. It is made clear that observations made hereinabove are exclusively for deciding the instant anticipatory bail application and shall not affect the trial.

Order Date :- 24.11.2023/Ravi Kant

(Krishan Pahal, J.)