

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12844 of 2023

Applicant :- Ramsajivan

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

Counsel for Applicant :- Satyam Pandey

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 - Ramsajivan seeking anticipatory bail in Case Crime No.264 of 2011, under Sections 363, 366 IPC, Police Station Madhaugarh, District Jalaun.
3. The prosecution story, as unfolded in the F.I.R., is that the minor granddaughter of the informant was enticed away by the accused persons including the present applicant and when she was not traced for many days, F.I.R. was lodged on 25.4.2011 and after investigation, charge-sheet was submitted in the matter.
4. Learned counsel for the applicant submits that that applicant is innocent and he has apprehension of arrest in the above-mentioned case, whereas there is no credible evidence against him. He has been falsely implicated in this matter. Allegations levelled against the applicant is false. It is further submitted that during investigation, a Crl. Misc. Writ Petition No.9372 of 2011 was filed by the applicant and other co-accused wherein their arrest had been stayed till submission of charge-sheet. It is also submitted that after investigation, charge-sheet was submitted and cognizance was taken by the court concerned. The charge-sheet was challenged by the applicant by way of Application u/s 482 Cr.P.C. No. - 40714 of 2011 wherein protection was granted to the applicant vide order dated 14.12.2011. The stay order was continued, but the learned trial court in compliance of the order of the Hon'ble Apex Court passed in Asian Resurfacing of Road Agency Pvt. Ltd and another Vs. Central Bureau of Investigation, (2018) 16 SCC 299, proceeded with the trial and no interim order is operative till date. It is also submitted that the applicant is old

aged person. He was under presumption that proceedings stayed by this Court were operative, therefore, he could not appear before the court below.

5. Learned A.G.A. opposed the prayer for anticipatory bail and it has been submitted that non-bailable warrant and process under Section 82/83 Cr.P.C. have already been issued against the accused applicant on 18.7.2023. It is further reflects from the record that the accused applicant remained absconding since long and when despite all the efforts, he could not be traced, process under Section 82/83 Cr.P.C. was issued on 18.7.2023 under the instructions of the court. It is further submitted that even before filing of the anticipatory bail application before the Sessions Court, Jalaun, process under Section 82 Cr.P.C. had already been issued against the accused applicant. It is also submitted that the accused applicant, against whom non-bailable warrant had been issued, is absconding and concealing himself in order to avoid execution of warrant and was declared as proclaimed offender in terms of Section 82/83 Cr.P.C., is not entitled for anticipatory bail.

6. From the perusal of the record, it appears that non-bailable warrant and process under Section 82/83 Cr.P.C. have been issued against the present applicant, which means that he has been declared as a proclaimed absconder by the Court.

7. The conduct of the applicants 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 the 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."

8. The present applicant, against whom non-bailable warrant and process under Section 82/83 Cr.P.C. have been issued and who has been proclaimed as an absconder, is not entitled for the benefit of the anticipatory bail in the light of the law laid down in Prem Shankar Prasad case (supra).

9. Moreover, the present anticipatory bail application is not maintainable in the light of the law laid down by the Hon'ble Apex Court in State of Haryana vs. Dharamraj, 2023 SCC Online SC 1085, decided on 29.8.2023.

10. 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 investigation / trial at all, is not entitled for any relief from this Court by way of granting anticipatory bail.

11. The anticipatory bail application is, accordingly, **rejected**.

Order Date :- 6.12.2023

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